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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
FOR MONTGOMERY COUNTY

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:  
PETITION OF EYA DEVELOPMENT, LLC : Local Map Amendment  
:  
5400 Butler Road, Bethesda : No. G-907  
:  
-----x

A hearing in the above-entitled matter was held on  
July 25, 2011, commencing at 9:34 a.m., at the Council  
Office Building, 100 Maryland Avenue, Rockville, Maryland  
20850 before:

Martin L. Grossman  
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Petitioner:

Cindy Bar, Esq.  
Robert Harris, Esq.  
Holland and Knight

Robert Youngentob, Petitioner

On Behalf of the Opposition:

Norman Knopf, Esq.  
Knopf and Brown

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>
Robert Dyer	24	56	
Robert Youngentob Voir Dire	62, 154 68	192	
Aakash Thakkar	95		
Dan Dozier	115	131	
Ann McDonald	133	152	
Jenny Sue Dunner	220	---	
William Landfair Rebuttal	233 281	257	262
Jim Humphrey	265	---	
Peter Salinger	285	---	
Charles Irish	301	---	
Christopher Kabatt	320	329	

E X H I B I T S

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41	EYA Powerpoint Presentation	71	337
42	2/16/11 MNCPPC Resolution	91	337
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44	7/12/11 NCPC Approval Letter	95	337
45	6/20/11 NCPC Alternates	98	337
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<u>Exhibit No.</u>		<u>Marked/Received</u>	
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54	Testimony Civic Federation	266	337
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57	Rendered Schematic Development Plan	303	337
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1                                    P R O C E E D I N G S

2                    MR. GROSSMAN:   This is a public hearing in the  
3   matter of Local Map Amendment G-907, an application by EYA  
4   Development, LLC, the contract purchaser for a local map  
5   amendment to the Zoning Ordinance requesting  
6   reclassification of parcel 513 on tax map HM-13 located at  
7   5400 Butler Road in Bethesda, Maryland, from the existing  
8   I-1 zone to the RT-15 zone.   That's a residential townhouse  
9   zone.

10                   And the property consists of 1.8121 acres of land  
11   located between Little Falls Parkway and the Capital  
12   Crescent Trail, southwest of River Road.   The land is owned  
13   by Peter V. Hoyt who authorized these proceedings, and is  
14   currently occupied by the Vetco Cinder Block Manufacturing  
15   Company.

16                   My name is Martin Grossman.   I'm the hearing  
17   examiner, which means I will take evidence here and write a  
18   report and recommendation to the Montgomery County Council  
19   sitting as District Council, which will make the final  
20   decision in the case.   Will the parties identify themselves,  
21   please, for the record?

22                   MS. BAR:   Yes, good morning, Cindy Bar, an  
23   attorney with Holland and Knight.   I'm here representing the  
24   applicant, EYA.

25                   MR. GROSSMAN:   All right.   I see Bob Harris there,

1 too. Is he going to be joining you today?

2 MR. HARRIS: Only for part of the hearing. Cindy  
3 is going to do most of the work. Thank you.

4 MR. GROSSMAN: Yes, sir.

5 MR. YOUNGENTOB: My name is Bobby Youngentob. I'm  
6 president of EYN.

7 MR. GROSSMAN: Thank you. And?

8 MR. KNOPF: Good morning. Norm Knopf of Knopf and  
9 Brown, representing the Citizens Coordinating Committee on  
10 Friendship Heights, and the Allied Groups of the Capital  
11 Crescent Trail Coalition, and Little Falls Watershed  
12 Alliance.

13 MR. GROSSMAN: We're going to have difficulty  
14 getting that all on one line.

15 MR. KNOPF: Yes. The citizens associations.

16 MR. GROSSMAN: All right. And I see there are a  
17 number of people in the audience here. Is there anybody in  
18 the audience here who wishes to be heard who is not a  
19 witness to be called by any of the counsel who have  
20 identified themselves? I don't see any hands. All right.

21 And okay, Ms. Bar, who do you plan to call as  
22 witnesses today?

23 MS. BAR: I have four witnesses today.

24 Mr. Youngentob; Bill Landfair, our land planner; Chuck Irish  
25 of VIKA, the engineer; and Chris Kabatt, of Wells and

1 Associates, the traffic engineer.

2 MR. GROSSMAN: So these are all witnesses I saw  
3 that you identified in your prehearing.

4 MS. BAR: Yes.

5 MR. GROSSMAN: Okay.

6 MS. BAR: Aakash Thakkar also of EYA is also here  
7 in the audience. We are not intending to have him called as  
8 a witness, but there are certain matters that if there are  
9 questions, that he's available to answer questions.

10 MR. GROSSMAN: Okay. And how do you spell his  
11 name?

12 MS. BAR: A-A-K-A-S-H, T-H --

13 MR. GROSSMAN: Start from the beginning again.  
14 I'm sorry.

15 MS. BAR: Sorry. A-A-K-A-S-H, T-H-A-K-A-R. Did I  
16 get it right?

17 MR. THAKKAR: One more K.

18 MS. BAR: Sorry.

19 MR. GROSSMAN: You cheated him out of a K.

20 MS. BAR: Yes.

21 MR. GROSSMAN: All right. And Mr. Knopf?

22 MR. KNOPF: We have four witnesses we hope to put  
23 on after their case. Do you want the names?

24 MR. GROSSMAN: Yes.

25 MR. KNOPF: Okay. Dan Dozier, D-O-Z-I-E-R, with

1 the Little Falls Watershed Alliance.

2 MR. GROSSMAN: D-O-Z-I-E-R?

3 MR. KNOPF: Right. And Peter Salinger, for the  
4 Citizens Coordinating Committee.

5 MR. GROSSMAN: Okay.

6 MR. KNOPF: Ann McDonald, for the Citizens  
7 Coordinating Committee; and Jenny Sue Dunner, D-U-N-N-E-R,  
8 for the Capital Crescent Trail Coalition.

9 MR. GROSSMAN: I'm sorry, how do you spell it,  
10 D-O-N-N-E-R?

11 MR. KNOPF: D-U --

12 MR. GROSSMAN: D-U.

13 MR. KNOPF: -- N-N-E-R.

14 MR. GROSSMAN: All right.

15 MR. HARRIS: Mr. Grossman --

16 MR. GROSSMAN: Yes, sir.

17 MR. HARRIS: -- as other individuals come in, I  
18 think that will fit into the classification of other people  
19 who may want to speak. So you may want to --

20 MR. GROSSMAN: All right. Thank you, Mr. Harris.  
21 Is that the gentleman signing in right now? All right. I  
22 don't know that we had people write that much.

23 MR. KNOPF: Must be a long name.

24 MR. GROSSMAN: Sir, you missed the beginning part  
25 so let me ask you, are you indicating that you wish to be

1 heard today on this matter?

2 MR. DYER: Yes.

3 MR. GROSSMAN: You're not to be called by any of  
4 the counsel sitting here? You're not a witness being called  
5 by them?

6 MR. DYER: No. Individual.

7 MR. GROSSMAN: And what's your name, sir?

8 MR. DYER: Robert Dyer, D-Y-E-R.

9 MR. GROSSMAN: All right. And you're testifying  
10 on behalf of yourself?

11 MR. DYER: Yes.

12 MR. GROSSMAN: And Mr. Dyer, if you had, if your  
13 schedule, and usually if there are citizens that appear here  
14 and they wish to be heard out of order because they can't  
15 stay the whole day, we, usually counsel is in agreement, can  
16 put them on earlier. So I don't know what your schedule  
17 looks like today, but if that's something -- usually we have  
18 the applicant put on evidence first. And they have four  
19 witnesses. And so that might be some time. What's your  
20 preference?

21 MR. DYER: Do you have a sense of the time frame?

22 MR. GROSSMAN: I would guess, usually it's three  
23 hours or so for the applicant, for the four witnesses.  
24 Would that be a fair guess, Ms. Bar, is that --

25 MS. BAR: Yes.



1 MR. HARRIS: Or less.

2 MR. GROSSMAN: Less?

3 MR. HARRIS: Less. Yes.

4 MR. GROSSMAN: Okay. Usually you take the  
5 estimates of the attorneys and you double them. But that's  
6 good.

7 MR. BAR: It kind of depends on Mr. Knopf.

8 MR. DYER: I think I could --

9 MR. GROSSMAN: Why don't you have a seat for a  
10 while, and we'll proceed and then you can, if you want to  
11 have us insert you, we'll deal with it then. Okay. All  
12 right.

13 MS. BAR: You know, as far as we're concerned, he  
14 can go early, he can start, I mean, if he wants to just give  
15 his testimony now.

16 MR. GROSSMAN: Well, he seemed a bit indecisive  
17 about it, so I'm going to let him hear a witness and then  
18 decide.

19 MR. DYER: I can go early if you want me to.

20 MR. GROSSMAN: No, no, it's up to you. I mean,  
21 the usual order of business is, the applicant goes first. I  
22 try to accommodate members of the community because I know  
23 they've taken time out from their busy schedules to come  
24 here. So if that's something you want to do --

25 MS. BAR: If you want to go first, you could.

1           MR. GROSSMAN:  -- that's up to you.  I'll leave  
2 that, I'll leave that up to you.

3           MR. DYER:  Well, I could go first.

4           MR. GROSSMAN:  Is that what your preference is?

5           MR. DYER:  Yes.

6           MR. GROSSMAN:  All right.  Let me explain a little  
7 bit about these proceedings, and then we'll call you as the  
8 first witness, if that's what you want.  All right.

9           This is a proposal to construct 30 dwelling units  
10 of which five would be MPDU's.  And this is a proceeding  
11 brought under what's called the optional method.  And the  
12 optional method under the Zoning Ordinance allows an  
13 applicant to propose a form of development and to specify,  
14 and usually on the schematic development, which parts of the  
15 development are binding; that is, they have to follow those  
16 or come back to the Council for a change, assuming it's  
17 approved.  And those are called binding elements.

18           Anything on the schematic development plan that's  
19 not specified as binding is considered illustrative.  And it  
20 could be changed at a site plan review later.  So that's  
21 something to bear in mind in these proceedings.

22           In this case, actually the schematic development  
23 plan that I've been provided has three binding elements.  I  
24 know that I've seen the letter of the Planning Board in this  
25 case, that a number were added subsequent to when it was

1 filed before me, so I believe that there are nine binding  
2 elements now. Is that correct, Ms. Bar.

3 MS. BAR: I think we're up to 12, but you'll be  
4 seeing them later.

5 MR. GROSSMAN: You have 12. Okay. All right. So  
6 there are numerous binding elements that are proposed in  
7 this case, and anything that's not proposed as a binding  
8 element would be, as I say, not binding so I'm talking  
9 illustrative.

10 And what happens in these cases, first of all, is  
11 we review this kind of application, and we look, we apply  
12 three criteria generally speaking. One is the purpose and  
13 requirements of the zone itself. So that's the first thing  
14 we look at is whether or not the application meets the  
15 purpose and requirements of the zone, which is spelled out  
16 in the Zoning Ordinance.

17 We then look to the question of compatibility, how  
18 compatible is the proposed development with the surrounding  
19 area, and then the public interest. And the public interest  
20 generally subsumes a number of factors, the recommendation  
21 of the technical staff, the recommendation of the Planning  
22 Board, the master plan recommendations, and other things  
23 such as would be in the public interest, such as the  
24 supplying of moderately priced dwelling units. So there are  
25 a number of factors that come in in that part of the

1 analysis.

2           And this hearing is conducted as a combination of  
3 formality/informality, informal in the sense that witnesses  
4 are sworn in, and they are subject to cross-examination. We  
5 have a court reporter who takes everything down. There will  
6 be a transcript of the proceedings, and we proceed more or  
7 less the way a courtroom proceeds, with testifying, opening  
8 statements, testifying and cross-examination and then  
9 closing statement and the admission of exhibits.

10           We're a little bit more relaxed than a courtroom.

11       We also accept certain types of hearsay evidence, if that  
12 evidence is otherwise reliable and probative. So that's the  
13 nature of the proceedings.

14           I have a few preliminary matters I want to go  
15 over. One is, I do need electronic copies in Word of all  
16 text documents, some of which have already been supplied to  
17 me by the parties, but if they are up-to-date statements  
18 that are filed, I would want those also. I would want PDF  
19 files electronically of all plans. Once again, the ones  
20 that did exist have been supplied to me, but I know that  
21 there have been changes made, if for no other reason there  
22 have been binding elements added which have to be indicated  
23 on the plans.

24           So I would ask the parties to submit that. We  
25 will keep the record open since there are changes being made

1 in any event, we'll keep the record open for some period of  
2 time after the hearing today for the filing of any documents  
3 needed. All right.

4 The Planning Board letter, I left some copies  
5 since it came in late last week, I left some copies on  
6 counsel table for you, and also left exhibit list copies on  
7 counsel table for you. And I don't know if, Mr. Dyer, have  
8 you seen the Planning Board letter, Mr. Dyer?

9 MS. BAR: I just gave it to him.

10 MR. GROSSMAN: Okay. All right. I also, I note  
11 that a number of the binding elements that I saw in the  
12 Planning Board letter are not really binding. In other  
13 words, they have outlets that can make them nonbinding,  
14 either with you at site plan, or whatever it may be, and I  
15 wanted to ask you about that. Why are they in, specifically  
16 in as binding elements. And I'm specifically referring to  
17 six, eight, and part of nine. So you might think about  
18 explaining through your witnesses or otherwise, why those  
19 are included as binding elements.

20 I haven't seen a copy of the easement agreement,  
21 unless I'm missing it in the file, that is mentioned under  
22 the new binding elements. So I would like to see that in  
23 the record.

24 I would like to know if there is going to be any  
25 land dedication as part of this proceeding. I don't think I

1 saw anything about that. And I noted that in looking at  
2 your revised surveyor's plat that there was no surveyors  
3 seal on the revised one, although there was on the original.  
4 so that has to be corrected. That's Exhibit 27E.

5 Also, have you revised the covenants after  
6 amending the SDP as you must have to add these binding  
7 elements?

8 MS. BAR: I have revised them, but I will submit  
9 that to you after today's proceeding.

10 MR. GROSSMAN: Okay.

11 MS. BAR: I just wanted to make sure that we got  
12 the final version --

13 MR. GROSSMAN: Right.

14 MS. BAR: -- in case something happened today.

15 MR. GROSSMAN: There has to be an executed --

16 MS. BAR: Yes.

17 MR. GROSSMAN: -- form of the covenants filed  
18 before the record closes. And I do have a format which I'm  
19 going to give you. I've printed out a copy for you, the  
20 format we use now. I noticed that the format you're using  
21 leaves open spaces for Council action. We have revised the  
22 format which doesn't require that you leave open spaces.

23 So you actually can execute something prior to the  
24 record closing, is the way the statute is worded, that's  
25 really called for. So you can use this format to accomplish

1     that in the revised covenants.

2                 MS. BAR:   Yes, that was always a dilemma.

3                 MR. GROSSMAN:   Right.   That's why I revised it.

4                 MS. BAR:   So that was a good idea.   So I will  
5     revise the ones that I submitted preliminarily to comport  
6     with this, and move it in.

7                 MR. GROSSMAN:   Okay.   I also noticed in reviewing  
8     the schematic development plan, I didn't see the two-foot  
9     variation from townhouse to townhouse that's required by the  
10    road design requirements of the Zoning Ordinance.   So I  
11    wanted to ask you about that.   It does say that those road  
12    requirements may be waived, but I didn't see you asking for  
13    a waiver of that particular requirement.   So that's one  
14    question I had.

15                MS. BAR:   Okay.   Did you want, did you want me to  
16    answer any of these questions now, or do you just --

17                MR. GROSSMAN:   I was going to list them out for  
18    you --

19                MS. BAR:   Okay.

20                MR. GROSSMAN:   -- and then you can decide.   I  
21    don't want you to respond to them, but I'd like to give you  
22    a heads up at the beginning of what questions came up as I  
23    reviewed the file in preparation for the hearing.

24                And I realize that consistency with the master  
25    plan or the sector plan is not a requirement in the RT-15

1 zone., but since you and staff claim consistency with the  
2 sector plan, please have your witnesses address how that  
3 squares with Mr. Humphrey's claim. And I don't see  
4 Mr. Humphrey here today. He did submit a letter indicating  
5 that he was going to be testifying on behalf of the Civic  
6 Federation. Does anybody have an idea of where Mr. Humphrey  
7 is?

8 MR. KNOPF: No, but he is sophisticated enough to  
9 know that he might not be on the first day, so he might come  
10 later. I don't know.

11 MR. GROSSMAN: Well, I was going to ask you to  
12 tell me how your claim of consistency squares with  
13 Mr. Humphrey's claim of inconsistency with the master plan,  
14 and the other points that he raises in his opposition.

15 And also please address the Planning Board's not  
16 clearly stated concern about parking. They appear to have a  
17 concern about parking.

18 I notice that you indicated on your SDP and  
19 technical staff apparently picked it up that there is a 20  
20 percent reduction for the, in the required parking for the  
21 MPDU units. And I don't know exactly where that comes from.

22 I looked at section 59-E-3.33(b) but that doesn't appear to  
23 give you 20 percent for this type of MPDU. So I'm not sure.

24 I'd like you to tell me where you get that 20 percent  
25 reduction in the requirement for parking.



1                   And my last point is actually addressed to  
2   Mr. Knopf. I wanted you to address the question if you  
3   oppose the rezoning. I couldn't quite tell from your  
4   letter. I know that your letter said that you oppose, but  
5   then the Planning Board had granted these easements, so that  
6   had eliminated one issue, and there were other issues you  
7   were negotiating on.

8                   I don't know where all that stands, and I'm going  
9   to ask you to address that, but my bottom line question is,  
10  if you do oppose, do you prefer an industrial zone in this  
11  area to a townhouse residential zone, and if you, is that  
12  you're letting the perfect be the enemy of the good, as the  
13  saying goes. So I wanted you to address those questions.  
14  All right.

15                  So the last thing is we need affidavit of posting  
16  and mailing. All right. Exhibit 39A will be the affidavit  
17  of posting. Exhibit 39B will be the affidavit of mailing.  
18  All right. Mr. Dyer, these are affidavits that the  
19  applicant submits to indicate that they have had the notice  
20  signed, posted for the required period of time, and that  
21  they sent out an informational mailing. That's what those  
22  affidavits are.

23                               (Exhibit No. 39A-B were  
24                               marked for identification.)

25                  MR. GROSSMAN: All right. Are there any

1 preliminary matters that you have, Ms. Bar?

2 MS. BAR: No, I don't think so.

3 MR. GROSSMAN: All right. Mr. Knopf?

4 MR. KNOPF: The only thing I was thinking about  
5 was, would it be helpful if I had like a one-minute  
6 introduction so as to tell you where we're coming from? It  
7 might narrow --

8 MR. GROSSMAN: We can do that as an opening  
9 statement --

10 MR. KNOPF: Right. Okay. I don't know if you  
11 were having --

12 MR. GROSSMAN: -- after the applicant's opening  
13 statement. We'll give them the opportunity to, after the  
14 applicant's opening statement, we'll give you a chance to an  
15 opening statement before they put on evidence. How's that?

16 MR. KNOPF: Okay. Okay, thank you.

17 MR. GROSSMAN: All right. Then do you have an  
18 opening statement, Ms. Bar?

19 MS. BAR: Well, it's very short and sweet, because  
20 I'm hoping to keep the proceedings the same, after what  
21 we've gone through in other proceedings before the zoning  
22 and hearing examiner's office. But we're hoping that this  
23 one will move along more quickly.

24 We are happy to be here this morning. I think the  
25 four witnesses will go into all of the required elements of

1 the rezoning, and we will answer all the questions that you  
2 posed in your initial comments through those witnesses and  
3 through my comments in closing statements or responses to  
4 them.

5 MR. GROSSMAN: All right.

6 MS. BAR: And really nothing further. We just  
7 would like to go through our presentation.

8 MR. GROSSMAN: Sure. All right. Mr. Knopf.

9 MR. KNOPF: Good morning. We represent the  
10 Citizens Coordinating Committee on Friendship Heights, which  
11 is an umbrella group of 15 civic associations in this area  
12 of Friendship Heights and the Westbard area. This property  
13 is within the area serviced by the Association.

14 The Association was very much against having park  
15 land taken for private use. And as a result they, and as a  
16 matter of principal, have taken the position that they can't  
17 endorse this project because it takes up park land for  
18 private use.

19 That issue, though, has now been decided, contrary  
20 to the Coordinating Committee's position and it is not an  
21 issue before the hearing examiner. We recognize it's not an  
22 issue before anybody. It's been decided. So then --

23 MR. GROSSMAN: But what park land are we talking  
24 about that's being taken from public use?

25 MR. KNOPF: Little Falls Parkway is, goes through

1 the Little Falls Park. And on either side of the parkway  
2 there is grass, trees, and so on.

3 MR. GROSSMAN: Right.

4 MR. KNOPF: And this project, I'm sure you will  
5 hear, provides for an ingress and egress road across the  
6 park land from the parkway.

7 MR. GROSSMAN: Right.

8 MR. KNOPF: And that takes up, I think, about, I  
9 forgot how many, 1400 some square feet. And that, because  
10 there is so little parkway down in this area, so little  
11 park --

12 MR. GROSSMAN: Right.

13 MR. KNOPF: -- the community, just as a matter of  
14 principal, they didn't want to endorse any private use of  
15 the park land. And it removes green grass to have a road.

16 MR. GROSSMAN: Okay. So it's the access --

17 MR. KNOPF: That's correct.

18 MR. GROSSMAN: -- road you're talking about. It's  
19 not the actual site itself.

20 MR. KNOPF: No, no, no, no.

21 MR. GROSSMAN: I see.

22 MR. KNOPF: Not at all. It's strictly the  
23 access --

24 MR. GROSSMAN: I understand.

25 MR. KNOPF: -- over the park. So that led them to

1 not endorse this project.

2 MR. GROSSMAN: I understand.

3 MR. KNOPF: Then, but as I said, we recognize  
4 that's behind us. That's been decided, and I don't believe  
5 that's before you for any decision.

6 We then looked at the project itself, and the  
7 community had many concerns regarding the project. I'm  
8 pleased to say that we met with the applicant and they've  
9 been -- they've heard us and been responsive, and those  
10 concerns, we believe, have been resolved with the exception  
11 of one, which will help explain, but I don't want to get  
12 into it now, why you have these binding elements that you  
13 are raising questions on.

14 That was a, the community feels strongly, as you  
15 know I do, that what's agreed to should be in a binding  
16 element lest it somehow escape us later. So we were very  
17 pleased with the binding elements, and with the one  
18 exception that I'll get to in a minute. If that exception  
19 is resolved, everything else was resolved, the community  
20 views this as a positive development within the community.

21 Okay. The one issue, and I'm not going to delay  
22 it with you, is the parking. And the community is concerned  
23 about the adequacy of parking, principally because they fear  
24 that if there is not adequate parking, parking will then  
25 occur on the adjacent park land, because that would be the

1 closest place. And that will result in not only  
2 aesthetically, but it will also destroy the grass and the  
3 plantings there and so on over time. So that's the  
4 community's concern.

5 We have, we hope to get that resolved. The  
6 Planning Board kicked it down the road and said they'll take  
7 a look at it at site plan. The community is not happy with  
8 that and I don't want to get into it now, but I don't  
9 believe you can find compatibility or a lack of adverse  
10 impact on adjacent property owners, both things that are  
11 required here, unless there is something that establishes  
12 now that there is adequate parking.

13 MR. GROSSMAN: Let me ask you this. I raised this  
14 question about where the 20 percent reduction came for the  
15 proposed MPDU's. But even assuming that it was bought --

16 MR. KNOPF: Right.

17 MR. GROSSMAN: -- as I read the requirements, that  
18 would call for then a total of 60 spaces under the Zoning  
19 Ordinance, 59-E-3.7. And they're proposing 63 spaces. They  
20 say that 58 are required because they have this two parking  
21 space reduction. But even if the full amount were required,  
22 no deduction for MPDU's, aren't they meeting the statutory  
23 requirement?

24 MR. KNOPF: They may be meeting the statutory  
25 requirement which is woefully inadequate. And we do not

1 believe that merely because it's a statutory requirement, if  
2 that's met that that satisfies the compatibility and the  
3 lack of adverse impact.

4 As the hearing examiner knows, floating zones like  
5 this are in the nature of a special exception. And in  
6 special exception cases, it's frequent the Ordinance says,  
7 you can have so many parking spaces, and the Board or you  
8 say, you're going to have some more.

9 And I think in order to assure that this, the park  
10 land does not become an overflow parking lot, that we have  
11 to have more spaces. And I think this will be explored a  
12 little by our witness that there is just inadequate spacing  
13 to have two per unit.

14 MR. GROSSMAN: Okay. Well, we'll then await your  
15 evidence on the point. Is that --

16 MR. KNOPF: That's it. So we hope with that  
17 resolved we would find this a very positive project.

18 MR. GROSSMAN: All right. Okay then. Ms. Bar,  
19 are you ready to call your first witness?

20 MS. BAR: I am, unless we are --

21 MR. GROSSMAN: Mr. Dyer, do you want to be heard  
22 now, or do you want to wait until after you hear a witness  
23 from the applicant? Counsel has agreed to take you out of  
24 order if you wish to be heard now, and if you can't spend  
25 more time.

1           MR. DYER: I guess I'll go now, since, simply  
2 because I have some family medical issues.

3           MR. GROSSMAN: Certainly. Please come forward.

4           MS. BAR: That's why we are accommodating you.

5           MR. DYER: Ordinarily, I would be glad to wait.

6           MR. GROSSMAN: You're welcome to stay for the  
7 whole proceeding.

8           MR. DYER: I'll stay as long as I can.

9           MR. GROSSMAN: I know the attorneys try and make  
10 it as exciting as possible. They don't want me to fall  
11 asleep in the middle. So, all right. Mr. Dyer, will you  
12 state your full name and address, please?

13           MR. DYER: Yes. It's Robert Dyer, D-Y-E-R. My  
14 address is 5608 Albia Road, A-L-B-I-A, Bethesda, Maryland  
15 20816.

16           MR. GROSSMAN: All right. Raise your right hand  
17 please?

18           (Witness sworn.)

19           MR. GROSSMAN: All right. You may have a seat.

20                         STATEMENT OF ROBERT DYER

21           THE WITNESS: All right. Thank you, Mr. Examiner.  
22 I'm Robert Dyer, a lifelong resident of the Westbard area.  
23 And my understanding is, you do have the written statements  
24 that I submitted in the record to the Planning Board for  
25 your review.



1           MR. GROSSMAN: If you submitted them as a part of  
2 the staff report. If they were just before the Planning  
3 Board itself, rather than through the staff, if they were to  
4 the staff then I would have a copy of it attached to the  
5 staff report.

6           If they were just to the Planning Board itself at  
7 the Planning Board proceeding, and I'm looking right now at  
8 the staff report, then I wouldn't have it, because the  
9 Planning Board proceeding itself is not in our record. Only  
10 their letter. And because they don't swear in witnesses and  
11 have cross-examination. And I don't see it attached to the  
12 staff report. Did you have a written submission to the  
13 Planning Board?

14          THE WITNESS: Yes. Both times I testified, and  
15 the second time I carbon copied it to Mr. Aurobona --

16          MR. GROSSMAN: Okay.

17          THE WITNESS: -- who was the staff member.

18          MR. GROSSMAN: Was that before or after the staff  
19 report?

20          THE WITNESS: They say --

21          MR. GROSSMAN: The staff report is dated July 1.

22          THE WITNESS: They say 48 hours in advance of the  
23 meeting, it will be put into the report for review for by  
24 the Planning Board.

25          MR. GROSSMAN: Well, it could be provided to the

1 Planning Board. They probably reviewed it. I'm not saying  
2 they didn't. I'm just saying that if it was after the staff  
3 report was issued, it's not in my record. So if you want to  
4 submit it, you can submit it. If you're here to testify  
5 about it, you can testify.

6 THE WITNESS: Okay. So I should tell you about  
7 what was in that.

8 MR. GROSSMAN: You should tell me whatever you  
9 want to tell me --

10 THE WITNESS: Okay.

11 MR. GROSSMAN: -- that's relevant to this case.

12 THE WITNESS: Because --

13 MS. BAR: And the record will be open, so you can  
14 submit it also.

15 THE WITNESS: Okay.

16 MR. GROSSMAN: We prefer, Ms. Bar, we prefer to  
17 have it as testimony and make it subject to cross-  
18 examination. So rather than -- I don't want to submit, have  
19 it submitted after the hearing, you know, of this nature.

20 THE WITNESS: Well, I'll just try to briefly,  
21 then, review. One of the overbearing issues, the cloud over  
22 this that I need to point out, because you are receiving  
23 this letter from the Planning Board that suggests that this  
24 is with the approval of the public in the process, and so  
25 forth. And if you don't, do you have -- you don't review

1    what was said in the meeting of the Planning Board?

2                   MR. GROSSMAN:  No.  It's not part of our record  
3    because it's not under oath.  Unless somebody puts it in the  
4    record here, and it's subject to objections by the parties  
5    when they attempt to put it in here, it's not in my record.  
6    What is in the record automatically is the report of their  
7    technical staff and the letter from the Planning Board, a  
8    copy of which you have.  The Planning Board letter itself is  
9    Exhibit 38, and it's automatically in our records.

10                  THE WITNESS:  Okay, because this would be -- one  
11   of the issues for me has been that this, the bridge that you  
12   heard about, which I think is very much a part of what  
13   you're deciding on this matter because of the fact that the  
14   bridge does come with the zoning change and it relates to  
15   how the -- the compatibility of use with what's around the  
16   site.

17                  The bridge does have a bearing on that.  And also  
18   in terms of the argument that this will help to turn the  
19   industrial area to residential, which is said to be an  
20   improvement for the public.  So that's why I do think it's  
21   important to consider the easement into the park land,  
22   because that was done before 99 percent of us were aware of  
23   this happening.

24                  And one of the issues has been that with the  
25   Coordinating Committee on Friendship Heights, is that the

1 negotiation between that group and the developer has been  
2 presented over and over in the various hearings that have  
3 come before this, and as was just mentioned a few minutes  
4 ago, as what the community wants.

5 And this is simply not the case, because this was  
6 negotiated way back in December and January.

7 MR. GROSSMAN: What's the antecedent for the word  
8 this? What do you mean, this was negotiated? What was  
9 negotiated?

10 THE WITNESS: The easement agreement for the  
11 bridge and easement between Little Falls Park and the site  
12 in question here today.

13 MR. GROSSMAN: You have to understand that I  
14 haven't seen the easement. It hasn't been filed yet, has it  
15 Ms. Bar?

16 MS. BAR: No.

17 MR. GROSSMAN: So I haven't seen this agreement at  
18 all. The only time, the only reason I know anything about  
19 it is I saw the reference in the materials from the Planning  
20 Board. So that's how I know about it, because it's in the  
21 proposed new binding elements. But I haven't seen it yet.  
22 And presumably it will come in here. I asked for it at the  
23 very beginning, I think before you came in. So presumably I  
24 will see it, but I haven't seen it yet.

25 THE WITNESS: Okay. I just want to mention this

1   because it may end up you have no other perspective of this  
2   in the record, so that the -- that you probably may see  
3   somewhere there was a hearing, a closed session in December,  
4   close to the holidays when everybody is shopping and going  
5   out of town. Then in January they had --

6               MR. GROSSMAN: You said a closed session?

7               THE WITNESS: Yes, a closed session of the  
8   Planning Board that the public could not see or hear what  
9   was being discussed.

10              At that closed session, they decided what they  
11   were going to do. And January 16th, I believe, at a meeting  
12   of the Planning Board in January, they then passed the  
13   easement agreement. And --

14              MR. GROSSMAN: Was that a closed session when they  
15   passed the agreement?

16              THE WITNESS: That one was open, but contrary to  
17   what is said, I'm in the Springfield development, which  
18   comes under the umbrella of the Coordinating Committee on  
19   Friendship Heights, and I was not informed about this in any  
20   method. And this was only brought up in our civic  
21   association in May, at our May meeting. And by that point,  
22   as you can understand, January has already long passed.

23              And so we had the situation where now this has  
24   already been decided and attached onto this. And we haven't  
25   yet had a chance, as citizens, to comment about our park

1 land being taken and given to a private developer. And so  
2 as you see in the -- will you be looking at the sector plan  
3 as you decide?

4 MR. GROSSMAN: I will be looking at the sector  
5 plan. That's one of the -- sector plans and master plans  
6 are not binding in this type of development.

7 THE WITNESS: Right.

8 MR. GROSSMAN: However, they do have an influence,  
9 and we do look at the recommendation of the sector plan as  
10 part of our consideration of the public interest.

11 THE WITNESS: Okay, because that, I think it's  
12 very important to put into context the particular clause  
13 that recommends a townhome development at this site, because  
14 I have an educational background in history, and so I know  
15 it's very important when you look at a document you have to  
16 put one statement into context. You can't just take it at  
17 its face value.

18 And if you look at the entire sector plan, you  
19 will notice that the rest of it, there's a lot of hand  
20 wringing in regard to the issue of the industrial zone where  
21 the writers, the staff that wrote this report, are saying  
22 that it's a mess as far as cars getting in and out of this  
23 industrial area, because there was one road, Butler Road,  
24 that is what this property in question is connected to by  
25 another easement. That's the existing access they have.

1           And then there is the other parts that, the other  
2 side of this same industrial zone on the south side of River  
3 Road is also, it's industrial but it doesn't really have  
4 actual roads that go to it.

5           So you'll see in the plan that there is, they are  
6 saying that there is a problem of access for vehicles, and  
7 that this hampers a change being made as to what we can do  
8 with this zone in the future, as far as changing the use.

9           But then they go 180 degrees, and in this one site  
10 that's in the middle of all these other ones, and they say,  
11 this particular one we think should be a townhouse, and the  
12 only way we can figure to do is to go to Little Falls  
13 Parkway.

14           And so aside from the issue of using a 1982  
15 environmental and watershed standards to make a decision  
16 today, which is questionable in my view, it emphasizes the  
17 fact that in the inclusion of this was done, I believe, as  
18 an accommodation to a developer at that time who had  
19 expressed interest.

20           And when that didn't go through, when the real  
21 estate market went south in the eighties, this never came to  
22 pass. But now we're stuck with this clause.

23           MR. GROSSMAN: You said that you believe that's  
24 the case.

25           THE WITNESS: Yes.

1                   MR. GROSSMAN: Is there evidence of that?

2                   THE WITNESS: It's only hearsay because I don't  
3 have factual, you know, I don't have the documents. And I  
4 don't think anybody has the internal discussions of the  
5 Planning Board staff at the time.

6                   MR. GROSSMAN: Well, I can't rely on your  
7 speculation as to what brought it about. I can't say that,  
8 once again for the sector plan, first of all, do you have  
9 page references that you're referring to? You mentioned  
10 that the, I know that they recommended the RT-10 zone for  
11 this area. Do you have page references to what you're  
12 talking about, about the parking issues, or the access  
13 issues, rather?

14                  THE WITNESS: I don't have the specific pages, but  
15 I just know that the, I'm sure that the applicant will say  
16 the page where it recommends it. So for the purposes of  
17 this hearing, I guess I can say, I would just ask you, using  
18 your experience, just not knowing the facts of that  
19 situation, just when you look at the sector plan, consider  
20 the fact that just one clause really is in total contrast to  
21 what is expressed throughout the rest of the document. And  
22 that probably, from your experience in this, should raise a  
23 question in your mind as to, you know, you would consider,  
24 why is this one thing so different from everything else it  
25 said.



1           MR. GROSSMAN: Well, it may not raise a question,  
2 but usually as a matter of, as we call it, as we consider  
3 this regulatory interpretation, statutory interpretation,  
4 usually the specific governs the general in terms of the  
5 recommendations. So if they have a specific recommendation  
6 for an RT zone, that would generally be considered to be  
7 more significant than their general discussions of problems  
8 with access in the area.

9           So that generally is a matter of a statutory  
10 interpretation. That's the way we look at it. But I  
11 clearly, if there are overarching concerns in the sector  
12 plan that you're referencing, then that would be a  
13 consideration.

14           THE WITNESS: Okay. I wanted to provide that  
15 background. And so the --

16           MR. GROSSMAN: You also mentioned the age of the  
17 sector plan.

18           THE WITNESS: Yes.

19           MR. GROSSMAN: We have the sector plan we have.  
20 If there hasn't been replacement, that's the one that  
21 applies, even though it clearly, sector plans and master  
22 plans, as they age out, their recommendations become less  
23 and less influential because they obviously are less  
24 applicable to the current time as they age out. So I  
25 understand that. But we can't consider a different sector

1 plan than the one that applies.

2 THE WITNESS: And the planning chair did say that  
3 they were under no obligation to follow that recommendation.

4 MR. GROSSMAN: Yes, it's not a requirement. Some  
5 zones require consistency with the rules of the master plan.  
6 This zone does not.

7 THE WITNESS: Okay. So I would just give the  
8 background that, first of all, the public has not been  
9 involved in this process in any meaningful way until June  
10 when I was able to first testify at that hearing. And I  
11 went to the National Capital Planning Commission hearing  
12 where this was then, the easement part was made official.  
13 And I testified against it at both of those hearings. And  
14 that was the only opportunity I had to be heard.

15 MR. GROSSMAN: Well, isn't that the -- that's your  
16 opportunity. They had a public hearing at which you  
17 testified. Isn't that your input?

18 THE WITNESS: Well, the problem is, it was already  
19 passed by the Planning Board prior to -- it was passed in  
20 January, and then it was sent to --

21 MR. GROSSMAN: But wasn't the hearing a public  
22 hearing by the Planning Board at which they adopted?

23 THE WITNESS: There was, but it was not advertised  
24 to the community is the problem.

25 MR. GROSSMAN: There was a public hearing at

1    which, you're just saying you didn't know about it.

2               THE WITNESS:  Right.  It technically, officially,  
3    as a public hearing, but the surround community was not  
4    informed about it.

5               MR. GROSSMAN:  I understand your concern.  But you  
6    also have the opportunity, and I don't know, as I say, I  
7    haven't seen the easement so it's hard for me to comment on  
8    it, but to the extent you have concerns about it, you are  
9    welcome to state them here so they're on the record of this  
10   rezoning proceeding.

11              THE WITNESS:  Yes, I just, the primary concerns,  
12   as I think they would relate to in the criteria you're  
13   looking at would come under the public interest, I think, as  
14   well as the compatibility, because first of all you have,  
15   and I don't know if you have the opportunity to go to sites  
16   when you are considering, in person, but --

17              MR. GROSSMAN:  We can have site visits, but they  
18   are controlled in a way that you have to have the court  
19   reporter there, and there are various things that make them  
20   difficult.  I am familiar with the area.

21              THE WITNESS:  Okay.  So then you, if you know the  
22   area, it's, Little Falls Park is the only park that's really  
23   anywhere close to where I live in the Springfield  
24   subdivision.  On the other side of the neighborhood is Wood  
25   Acres, and they have Wood Acres Park.  And we were, in the

1 sector plan for 1982, there is a suggestion made that we  
2 have a park at Ridgefield and Westbard. There were two  
3 wooded areas there in the past, and it was suggested those  
4 be made parks. The one, I believe on the shopping center  
5 side be made into a park. But this ended up being turned  
6 into a housing development.

7           So we never got our park, and we don't have any  
8 park on our side of the neighborhood. And so the only green  
9 space you find in the area is Little Falls Stream Valley  
10 Park, which Little Falls Parkway goes through and which, if  
11 you look at the, I assume there will be maps and so forth in  
12 the record, you will notice that the parkway on this section  
13 is entirely controlled access. It's a natural environment.

14           And so when this is brought in, you now have an  
15 ugly intrusion in to this what, if you drive down, you see  
16 is just park land on either side, and it's pretty well  
17 shielded, even though some of the photographs used have been  
18 taken in the winter and have been made to emphasize that  
19 things are more prominent than they are from the parkway  
20 view.

21           MR. GROSSMAN: That things are more prominent, you  
22 mean the Vetco Company site?

23           THE WITNESS: Yes, the industrial area, as well as  
24 the Park Bethesda building up on Westbard. You don't really  
25 see these things as prominently when you go down the

1 parkway, as they were made to appear in some of the  
2 exhibits.

3           So that section that's in question here is closed  
4 access, as well as you have the precedent, that there's no  
5 other private driveway from the north. There is only the  
6 public roadways that have intersections, and there is a pool  
7 parking lot access, which is a public county facility.  
8 There is no private driveway going to private homes.

9           And so this is setting a precedent as well as  
10 ruining what's on of the few isolated green spaces we have  
11 in the area, really, the only one as I say for those of us  
12 who are on this side of the neighborhood. So that's  
13 reducing our, basically our access to green space and  
14 undisturbed areas, because only the parkway is the only non-  
15 natural part of that stretch there.

16           MR. GROSSMAN: Do you consider the current  
17 industrial zone to be preferential to the residential  
18 townhouse zone?

19           THE WITNESS: I -- my opinion is not an absolutely  
20 in favor of one or the other. But my concern is that  
21 because we haven't had the sector plan, and we haven't had  
22 that opportunity for community input as to what we think the  
23 future of this should be, all we have is what the situation  
24 is right now, which is that you -- I think that there is the  
25 potential, if the bridge were to be eliminated, the easement

1    were to be eliminated from this, and the Butler Road access  
2    would be used, and some streetscape improvements made to  
3    Butler Road, that I would not -- and the other concerns that  
4    I had brought up to the Planning Board were addressed, which  
5    they were not at the hearings, then my position is not  
6    absolute opposition to having a residential development down  
7    there.

8                    But with the bridge, I would say, no, I would not  
9    approve of this with a bridge easement. And if my concerns  
10   can't be addressed by the Planning Board either now or at a  
11   site plan hearing, then I would oppose it as well. But, so  
12   my position would be that, no, I would not absolutely oppose  
13   having residential.

14                   But the questions about the future of this area, I  
15   don't think it would necessarily be the worst thing in the  
16   world if it remained industrial or commercial if no steps  
17   are taken to make it accessible for these kinds of --  
18   because I think that relates much to the compatibility with  
19   the surrounding sites.

20                   Because it's stated that this development, if it  
21   goes forward, could be a catalyst to turning this industrial  
22   zone to residential.

23                   MR. GROSSMAN: You said, it is stated. Who  
24   stated?

25                   THE WITNESS: The applicant as well as the

1 Planning Board, I think, in the record at the hearing. They  
2 said that this would be a beginning of the potential to  
3 change over to residential.

4 But the problem is, if you don't have the access  
5 through the existing Butler Road, then that means that  
6 really the argument for the bridge easement actually becomes  
7 the best argument against the bridge easement, because if  
8 the only way -- if all the County official bodies state the  
9 Butler Road is unacceptable, then that would mean that the  
10 other land owners along this same street would then be given  
11 the impression that they cannot change the residential if  
12 they don't have access to Little Falls Parkway or some other  
13 egress. So that would actually inhibit, if they have an  
14 exclusive bridge --

15 MR. GROSSMAN: I think you're asking me to  
16 speculate a lot on that. I have to focus on what's being  
17 proposed here. And I think that it's, I can't really  
18 speculate on what others may think in the future. That's  
19 not really part of my review. I have to look at the factors  
20 which I outlined. And based on the evidence that's  
21 submitted, including your testimony, make a recommendation  
22 to the Council. But I can't speculate on what others may  
23 think in the future about this.

24 And if I understand what you're saying is, you're  
25 so strongly opposed to the access that is proposed, and the

1    easement that I haven't seen yet, that it defeats any  
2    benefit you think it may have to having a residential  
3    development there, rather than industrial?

4               THE WITNESS:   Correct, because the benefits that  
5    are states are really not -- the major ones that come to  
6    mind are the, that it's been said in the agreement that  
7    there are options.   And my interpretation of the legal  
8    language leads open the possibility that none of these  
9    things might ever come to pass, that it was not binding  
10   enough, in my opinion.   But what is suggested what might  
11   happen --

12              MR. GROSSMAN:   Well when you say it's not binding,  
13   what's not binding?

14              THE WITNESS:   The agreement which, I guess you  
15   will receive a copy of at some point, between the Planning  
16   Board and the applicant --

17              MR. GROSSMAN:   Okay.

18              THE WITNESS:   -- which sets out the, what they've  
19   agreed to in exchange for the easement.   And so that it has  
20   been said in that document that there will be improvements  
21   made to the Willet's Branch Creek, which if you -- I grew up  
22   around this creek, so I certainly, it's very important to  
23   me.

24              But if you're looking at the specific benefits to  
25   the community, there's a lot of pollution in that creek, and



1 raw sewerage, as registered in the official measurements,  
2 that what's proposed is not going to eliminate all of that.

3 And as far as that going onto the, to where it goes into  
4 the public drinking water, those who drink that water  
5 actually live in Washington, D.C., not in our community. So  
6 if you look at it just purely on the scientific notes --

7 MR. GROSSMAN: You're not suggesting they're  
8 expendable?

9 THE WITNESS: No. No, not at all. Just simply  
10 stating that if the benefit is to us that have to look at  
11 this driveway coming out and deal with the hazards of it,  
12 because the agreement that's been reached here suggests that  
13 there is going to be public access via this easement, and so  
14 you're going to have people jaywalking across Little Falls  
15 Parkway, and cutting down there to get this trail access.

16 So we've got to deal with these traffic hazards of  
17 an unlighted area around a blind curve of people and  
18 vehicles coming out that are not there today. So this is  
19 going to make it more risky for the public driving.

20 MR. GROSSMAN: That's certainly something to be  
21 considered, but it's very difficult to do that in the zoning  
22 context.

23 THE WITNESS: Right.

24 MR. GROSSMAN: It's really, those are the site  
25 plan kinds of issues, and sometimes preliminary plan of

1 subdivision issues, rather than rezoning issues, which  
2 considers broader concepts. But compatibility is certainly  
3 one of those issues that we can consider.

4 But I'm not sure that I can -- I can't make a  
5 prediction here about who's going to -- about whether this  
6 is going to increase jaywalking. I mean, it's not the kind  
7 of thing that I can address or really that the Council can  
8 address in this kind of a proceeding. This is a rezoning  
9 proceeding.

10 So we look at, usually at broader issues than that  
11 specific individual issues, unless it is very apparent from  
12 the, what's been shown.

13 THE WITNESS: But, correct. I just mention it  
14 from the standpoint that this can only happen if you allow  
15 the zoning change. They can't do this if it remains  
16 industrial. And so as it relates to the public interest of  
17 safety and of enjoyment of the park that we pay for, it is  
18 in those senses related to your decision as to how your  
19 change will affect us who live around it.

20 MR. GROSSMAN: I understand. But understand,  
21 first of all, I don't make the decision. I make a  
22 recommendation to the Council.

23 THE WITNESS: Correct.

24 MR. GROSSMAN: I compile a record here, and I make  
25 a, write a report and a recommendation to the Council which

1 will make the decision in this case. And certainly the  
2 considerations of compatibility that you have raised are  
3 considerations which must be taken into account. What I'm  
4 saying is, if you'd get into the specific details of whether  
5 or not there may be jaywalking in the future, or something  
6 like that, that may go a bit beyond what can be considered  
7 in this type of proceeding when the exact contours of what  
8 would be developed haven't been set forth yet. It's more of  
9 a site plan issue is what I'm saying, that part.

10 THE WITNESS: I think only from the standpoint  
11 that it is guaranteed by the agreement to be a road that  
12 connects to Little Falls Parkway at an uncontrolled  
13 intersection. That would be a factual statement.

14 MR. GROSSMAN: All right. Okay.

15 THE WITNESS: And so I would just say that as it  
16 relates to your decision, and I don't think it probably is  
17 really going to come under your decision making process  
18 whether the applicant would change to accept Butler Road as  
19 an access, but I was just down there yesterday myself, and  
20 the road is in pretty good shape there, as it is, and would  
21 require only an improvement over the easement section to the  
22 site.

23 And I think as it relates to the parking, which  
24 the Planning Board did put into their concerns that come to  
25 you, there is parking available down Butler Road, and

1 certainly could even be improved to facilitate it even  
2 better, because I know that neighbors of mine who visit  
3 people at the Kenwood Condominium that's across River Road  
4 from Butler Road, they have very little parking there, and I  
5 often hear that they park on Butler Road. So I know it has  
6 been used for public parking in the past.

7           And so if you had only Butler Road access, that  
8 would eliminate -- if you don't have an easement to Little  
9 Falls Parkway, I don't think people are going to go all the  
10 way out of their way to park on Little Falls Parkway if they  
11 can just, if they are being directed down Butler Road to  
12 these homes.

13           So, and as far as the compatibility, as presented  
14 in the application, I haven't heard it today, but as it's  
15 been previously presented, the suggestion is that this is  
16 compatible because of various residential developments that  
17 are nearby.

18           But I think what's happening and why, I think just  
19 from a map, even if you don't visit the site, you'll be able  
20 to determine that this is very much a stretch, because the  
21 residential sites are farther away from this site than the  
22 sites that are immediately adjacent, which are all  
23 industrial.

24           So I think they are trying to pull in things that  
25 are not relevant in any sense to this development. Yes,

1   there is a residential building, two residential buildings  
2   up on Westbark, but that's far removed from this factory  
3   site down on Butler. And single family homes are across the  
4   park in the other side of Little Falls Park. So it's not  
5   adjacent to residential currently, and there is no other  
6   residential site in this industrial zone. So there's no  
7   precedent right now for doing this.

8               And secondly is the compatibility of the town  
9   homes with the facilities that are on the adjacent  
10  properties. And one that really jumps out to me is the  
11  Marden's Auto Facility, that is just adjacent there, up  
12  Butler Road. They have tremendous auto racks that are  
13  several stories high where they place vehicles that are on  
14  the site.

15              And with what I understand from this letter is a  
16  35-foot, approximately three-story townhome height limit, I  
17  don't understand how people who have windows fronting in  
18  that direction will not see this. And it's quite the -- I  
19  don't know what sort of barrier, that's a site plan issue as  
20  to what they would put up.

21              But as far as people living on this site, it's  
22  difficult for me to understand how they will deal with the  
23  sounds, the smells, and the sights of these auto facilities.

24   And the reason I mention Marten's in particular, is if you  
25   know the history of the dealership, which is actually in

1 Northwest Washington, they opened this facility on Butler  
2 Road because they have no where to go where they're  
3 currently located.

4 And as you probably also know, there's no other  
5 such land anywhere convenient to their auto dealership in  
6 Northwest Washington. So this was a very good solution for  
7 them, because they send cars back and forth with customers.  
8 You see them going in and out Butler Road all the time.

9 And so I don't -- it's inconceivable that Marten's  
10 will ever move from this site because they have nowhere to  
11 go and it would eliminate their business of repairing cars.  
12 So even if other smaller sites might be enticed in the  
13 future to change to some other ownership, Marten's is there  
14 to stay, as well as the television tower, which isn't going  
15 anywhere.

16 So I don't see that this is going to facilitate a  
17 satisfactory living environment for people who are in this  
18 proposed town home development, because they are really  
19 going to be surrounded, unless somebody is proposing to put  
20 up a three-story wall, which I don't think will pass any  
21 Planning Board decision, is how will this be shielded and  
22 how can people live in there?

23 I think all of us go to gas stations and auto  
24 repair facilities and have never remarked on the pleasant  
25 odors that are emanating from these, or the contamination as

1 far as oil. And the facilities such as Marten's make this a  
2 very incompatible situation that I don't, I can't foresee  
3 anybody working around that.

4 MR. GROSSMAN: Well, you know, I would say that  
5 one of the specific statutory purposes of the RT zone is as  
6 a buffer or transitional use between commercial, industrial,  
7 or high density apartment uses, and low density one family  
8 homes. So it's apparently conceived in the statute that  
9 these RT zones may be next to industrial or commercial  
10 developments. So I have to follow what the statutory  
11 concept is of this development.

12 I understand you are saying that you don't think  
13 that it's compatible because the future residents of the RT  
14 zone will not find it compatible with the nearby industrial  
15 facilities or the commercial development.

16 Well, the zone is specifically, one of the  
17 purposes of the zone is to provide a transition between  
18 those commercial zones and the single family zone.

19 THE WITNESS: Well, I guess it just stretches the  
20 reason, I guess, that this is proposed.

21 MR. GROSSMAN: That's a statutory provision. I'm  
22 not, it's not what I'm reasoning up. I'm just saying,  
23 that's what the statute provides.

24 THE WITNESS: Well, it would seem that -- I mean,  
25 this is probably not the forum for me to argue against the

1 statute, but I just -- I mean, it would seem that just about  
2 anything could be approved under that statute, beyond any  
3 sort of common sense.

4 MR. GROSSMAN: Well, I think that most of the  
5 concern that would be addressed would be whether or not the  
6 new proposal is compatible with the existing and anticipated  
7 future development of the area, so that you wouldn't be  
8 imposing on some other existing residence something that  
9 would be incompatible with them, although clearly there is  
10 some consideration about the people who will be residents in  
11 the townhouses as well.

12 But I'm just telling you that I've read you the  
13 statutory language. And the statute does conceive of this  
14 kind of zone as being transitional potentially between  
15 industrial, commercial, and other single-family detached  
16 residences. So I just wanted you to understand that.

17 All right, sir. What else do you have, because  
18 you have been testifying for a considerable period of time.

19 THE WITNESS: I'll just, I think one other  
20 important thing that I should bring up, aside from the issue  
21 that what's put before you refers to that three-story height  
22 limit, and so, but we have not, because of the stage we're  
23 in in this process, we haven't seen what that will look  
24 like. There's a potential that it could be more intrusive  
25 from the parkway than what is there now, the way, depending



1    how the homes are placed and how tall they appear from  
2    there.

3               Without seeing a site plan, I think it's difficult  
4    for the community to know whether this is going to intrude  
5    on the park from that vantage --

6               MR. GROSSMAN:  What you have, in this kind of  
7    situation, is you have the whatever plans are submitted, and  
8    you have the limitations on height, some of which are in the  
9    Zoning Ordinance and others which may be in the schematic  
10   development plan itself.  I think in this particular case  
11   they have said that their height will not exceed what is  
12   specified, 35 feet, for a main building, yes, 35 feet in the  
13   RT-15 zone, in terms of height.  And so that's what you  
14   have.

15              I mean, at this stage, you wouldn't have until  
16   site plan, and this will be true in every rezoning case.  
17   You're not going to have more than these tentative plans and  
18   the limit.  You have a maximum limit here in terms of  
19   height, both in the zone and in the binding elements.

20              THE WITNESS:  Okay.  I guess the one other point  
21   that I would want to state for the record as it relates to  
22   the public interest and compatibility, and I think this also  
23   relates as far as the, maybe more for the people who will  
24   eventually live in this area, the question that you have in  
25   this letter here, where it refers to the brown field.  And

1   that's --

2                   MR. GROSSMAN:   This letter here being the Planning  
3   Board letter?

4                   THE WITNESS:   Yes, the July 20th letter.

5                   MR. GROSSMAN:   Exhibit 38?

6                   THE WITNESS:   Yes.   And this letter refers to a  
7   brown field.   What you have on Butler Road, I actually can  
8   state for the record that I have been dealing with the  
9   Maryland Department of the Environment for four years in  
10   regards to the underground fuel spill that occurred on  
11   Butler Road at a former fuel transfer facility, which has  
12   now become an athletic academy of some kind.   A building was  
13   put on that site.

14                   But they went through the voluntary cleanup  
15   program, which again, this was never, our neighborhood was  
16   never told about this.   And nobody knows about it.   I just  
17   came across it when I was researching about Butler Road and  
18   the -- it was never something that was given to us.   But  
19   this is a fuel spill that was supposedly cleaned up.

20                   And I can't get the -- I've asked in letters,  
21   emails, phone calls to the Maryland Department of the  
22   Environment on many occasions as far back as four years ago  
23   when I found out about this.   And I did ask our --

24                   MR. GROSSMAN:   What's your point about it?

25                   THE WITNESS:   Well, the point is that there was an

1 underground fuel spill containing the additive MTBE. And  
2 this is found in the environmental assessment on this  
3 property, the Hoyt property in question. And it, there is a  
4 factual finding of MTBE on this site. And so this shows  
5 that the product that was under this site has moved to other  
6 sites, because there was no fuel facility on --

7 MR. GROSSMAN: You say the product that was under  
8 this site. The product that was under --

9 THE WITNESS: The product that was under the fuel  
10 transfer station has moved in soil and ground water to other  
11 sites. And so we don't know, you know, it would be  
12 speculation for me to say, I think it's under this site or  
13 that site. We do know it's under the Hoyt site, and it may  
14 be under others. It would be logical to assume it might be  
15 under other sites on down Butler Road.

16 And so one of the issues I have as far as the  
17 public interest is not only if this soil is disturbed under  
18 there, not only the runoff into the creek, because this is  
19 established as a drinking water contaminate nationwide, MTBE  
20 is. And so you have this on, you had this incident on one  
21 site. You have it on this Hoyt property.

22 And the question is, we don't know if they clean  
23 that up, not only what the effects of that disturbing will  
24 be on the creek, but also if there is product present in the  
25 soil on other properties, what prevents it from oozing back

1 under this site.

2 MR. GROSSMAN: Well, you're raising questions. Do  
3 you have any evidence as to what the impact would be. I  
4 have to consider what the evidence is. And is there  
5 evidence that there would be an issue about this?

6 THE WITNESS: As far as the history of that  
7 additive in ground water and soil in the United States?

8 MR. GROSSMAN: No, I mean, in this specific site.  
9 If I understand your point, you're saying there is a  
10 concern about allowing this development because of the land  
11 disturbance, when they do a land disturbance may result in  
12 the MTBE's leaking into the water, the underground water  
13 supply.

14 THE WITNESS: Right.

15 MR. GROSSMAN: That's what I understand what you  
16 are saying. And so my question is, is there evidence this  
17 would be a problem in this case?

18 THE WITNESS: I believe the two solid evidentiary  
19 exhibits would be the report from the Maryland Department of  
20 the Environment regarding the original fuel site, having  
21 gone through this cleanup program, as well as the  
22 environmental assessment that was filed with the National  
23 Capital Planning Commission of the Hoyt property which said  
24 they detected amounts of this product in the soil and ground  
25 water of the Hoyt property.

1                   MR. GROSSMAN: No, I don't say that would be  
2 irrelevant. I'm saying, how can I reach a conclusion  
3 regarding the impact of that? I need somebody to testify as  
4 to what would be the impact of digging in the soil.  
5 Ordinarily, that's not something that's considered as part  
6 of the rezoning. It's really a site plan issue, to make  
7 sure that any development is done safely. But it's not a  
8 rezoning issue ordinarily. But if you had evidence that  
9 that could not be done safely, if you have an expert that  
10 you're talking about, any testimony regarding that?

11                  THE WITNESS: No. I just --

12                  MR. GROSSMAN: I can make a recommendation based  
13 on speculation that because there are some, there is some  
14 evidence of some chemical in the ground, that that means  
15 that this is a problem for development. I need some actual  
16 evidence that it is a problem before I could reach any  
17 conclusion.

18                  You're raising a lot of issues, but you're not  
19 giving me any evidence as to what I can conclude from these  
20 issues that you raise. And I have to go on the evidence. I  
21 can't just speculate that this is a problem.

22                  For all I know MTBE's at whatever level has been  
23 discovered on the Hoyt property, you're telling me it has  
24 been discovered, it's not in evidence before me, actually.  
25 But that may not be a danger to anybody at that level. I

1 have no idea.

2 THE WITNESS: Correct. I see it in the letter  
3 that you have, Exhibit 38 --

4 MR. GROSSMAN: It mentions a brown field.

5 THE WITNESS: Correct. And I assume that anybody  
6 who is examining this would be looking at the brown field to  
7 find out what it was as far as the public interest in  
8 criteria number three.

9 MR. GROSSMAN: This is a public hearing at which  
10 anybody who has relevant evidence, and this has been widely  
11 publicized in newspapers and by posted notice in the County,  
12 anybody who has evidence regarding this can come here and  
13 present that evidence. That's why we have this hearing.  
14 So, yes, if the evidence is presented, I will look at it.

15 THE WITNESS: Well, that's, I don't have physical  
16 evidence here today. I just have, I can refer to those are  
17 actual documents that exist in both cases.

18 MR. GROSSMAN: Let me turn to Ms. Bar for a  
19 second. Do we have a copy of the study that this witness is  
20 referring to that shows that on the Hoyt property that there  
21 are MTBE's and what, if any, impact that would have?

22 MS. BAR: No, we don't have a copy of the study.

23 MR. GROSSMAN: Okay.

24 MS. BAR: We are, I believe, are going to address  
25 that there, because it is a brown field site, we will have

1 to go through the MDE process.

2 MR. GROSSMAN: Okay.

3 MS. BAR: But we were not intending to go through  
4 that process at this point. This is a rezoning. And they  
5 will have to go through all the statutory requirements,  
6 cleanup requirements, you know, as applicable. But we  
7 didn't consider that germane. That's not a finding you're  
8 going to make. That's a finding ultimately MDE or other  
9 agencies will make.

10 MR. GROSSMAN: All right. I think the point is  
11 that they are going to have to go through some procedures in  
12 order to ensure that the public safety is protected. So I'm  
13 not in a position here to review what those procedures are.  
14 The one thing that we do, would expect, is that the  
15 statutory requirements are going to be followed to make sure  
16 that the public is protected.

17 I think you're anticipating that this is, this  
18 part of the process does not include some of the things that  
19 you are referring to. What other issues do you have, sir?  
20 Because I have to let other people speak, too. You've been  
21 speaking for an hour, or pretty close to it.

22 THE WITNESS: Yes. I think, no, I think I can  
23 conclude my testimony. I've just tried to bring up what I  
24 think are the relevant issues as to when you make the  
25 recommendation as to how this, making this change is

1 incompatible with the surrounding sites, and it's impact on  
2 the public.

3 And as far as whatever elements of my testimony  
4 are helpful to you in that regard, I submit them for your  
5 consideration. And I appreciate your giving me the time to  
6 speak.

7 MR. GROSSMAN: Certainly. I appreciate your  
8 taking your time to come down here and share your concerns  
9 with us. I think it's very important for us to have that.  
10 Ms. Bar, cross-examination?

11 MS. BAR: Just three quick questions.

12 CROSS-EXAMINATION

13 BY MS. BAR:

14 Q And one of them, I nicely had Mr. Dyer go before,  
15 but because of that, the exhibits, including the surrounding  
16 area exhibits, which would have enabled him to point out  
17 where he lives, have not been submitted.

18 MR. GROSSMAN: Why don't you mark that surrounding  
19 area exhibit so he can point out where he lives.

20 MS. BAR: Okay. So that is, it's Exhibit 8, but  
21 we will be submitting a new one. Could you pull that?

22 (Discussion off the record.)

23 MS. BAR: I just have three other, or one other  
24 question, actually.

25 BY MS. BAR:



1           Q     I think you testified as to this, but just to be  
2 clear, you were able to and did testify at the Planning  
3 Board hearing on June 16th regarding the easement, the  
4 access easement?

5           A     Correct.

6           Q     And you were able to be at and did testify at the  
7 July 7th, 2011, National Capital Planning Commission  
8 proceedings with respect to the granting of the easement?

9           A     Correct. However, the easement had already been  
10 approved in January by the Planning Board.

11          Q     Okay, but --

12               MR. GROSSMAN: I don't understand that. You  
13 testified on June 16 regarding the easement?

14               THE WITNESS: That was narrowly regarding the  
15 easement agreement that was reached between the Planning  
16 Board and, the easement had been approved with the, under  
17 the understanding that the agreement was going to then be  
18 reached, and then was approved at the June 16th meeting.

19               MR. GROSSMAN: Well, Ms. Bar, is the easement  
20 itself actually approved until the agreement was approved?

21               MS. BAR: Well, the easement has -- well, we're  
22 going to go through this in our testimony in terms of the  
23 process and where we are at in the process. But the  
24 Planning Board approved the concept of the easement, but  
25 then they worked on an easement agreement.

1 MR. GROSSMAN: Okay.

2 MS. BAR: And then that easement agreement was  
3 approved at a subsequent proceeding.

4 MR. GROSSMAN: Right. And there's some -- but  
5 when this witness says that he, that the Planning Board  
6 approved the easement in January, is that an accurate  
7 statement? Or is it actually that they approved the  
8 easement at the June proceeding?

9 MS. BAR: Yes, they approved the concept of the  
10 easement, of granting the easement in January. And then the  
11 actual easement they approved at the hearing in June, was my  
12 understanding of it. And so he, I guess Mr. Dyer was not at  
13 the January hearing, but he was at the hearing in June.

14 MR. GROSSMAN: Okay.

15 MS. BAR: And the National Capital Planning  
16 Commission also had a hearing on easement, and Mr. Dyer  
17 testified at that. And there was another Planning Board  
18 hearing which was on this proceeding, on the zoning  
19 proceeding, which was July 14th of 2011.

20 BY MS. BAR:

21 Q And did you testify at that hearing?

22 A Yes, I did.

23 Q Okay.

24 A However, I was told by the staff member who,

25 Michael Mawr, who was in charge of the June hearing, he told

1 me that I was not to address the easement itself. That had  
2 already been approved. He said, this is only about the  
3 easement agreement. So I had no opportunity to give my  
4 input on the easement itself.

5 Q But you did testify as to your input on this  
6 zoning?

7 A Correct. But I did not have input on the easement  
8 as a citizen.

9 MR. GROSSMAN: I mean, the easement itself is not  
10 before me, as such. I mean, that's a Planning Board matter,  
11 not a matter for me to decide. And so if you have an issue  
12 about whether or not the Planning Board gave you sufficient  
13 opportunity to appear before them regarding an easement,  
14 it's not something I can opine on. That's their procedure.

15 BY MS. BAR:

16 Q I just wanted you to point out where your -- this  
17 will be the next exhibit.

18 MR. GROSSMAN: All right. That will be Exhibit  
19 40. Did you put it up on the board?

20 (Exhibit No. 40 was  
21 marked for identification.)

22 MR. LANDFAIR: Sure.

23 MR. KNOPF: This is the neighborhood.

24 MR. LANDFAIR: The surrounding area.

25 MR. KNOPF: Surrounding area.

1 MR. GROSSMAN: Revised surrounding area map.

2 MS. BAR: Yes.

3 (Discussion off the record.)

4 BY MS. BAR:

5 Q Can you just point out on this --

6 A You want me to go up to the --

7 Q Yes, can you, and just, you know, point out where  
8 you live?

9 MR. GROSSMAN: Mr. Landfair, did you mark on it?

10 MR. LANDFAIR: I did. Yes. Exhibit number 40

11 MR. GROSSMAN: Thank you.

12 BY MS. BAR:

13 Q If it's on the map, it's possible it's not. Elby  
14 is pretty far away.

15 A I think this is Elby. This is the end of, this is  
16 the end of my street. It does extend --

17 MR. GROSSMAN: Hold on one second. Where is north  
18 on this?

19 MR. LANDFAIR: North is --

20 MR. GROSSMAN: I can't see that far, so I can't  
21 see where the -- point out River Road on that, if you would?  
22 Okay. All right.

23 MR. LANDFAIR: So here is Little Falls Parkway.

24 MR. GROSSMAN: Right.

25 MR. LANDFAIR: River Road.

1                   MR. GROSSMAN:   Okay.   The site is marked with a  
2   red arrow?

3                   MR. LANDFAIR:   Correct.

4                   THE WITNESS:   As you can see, there's no other  
5   parks.

6                   MR. GROSSMAN:   Mr. Dyer, will you point to the  
7   spot where you live?

8                   THE WITNESS:   This is the end of my street.

9                   MR. GROSSMAN:   All right.   You're pointing to a  
10   spot that's essentially to the west, to the west of the  
11   site.   Is that outside of the suggested defined -- is the  
12   yellow --

13                  MR. LANDFAIR:   The yellow line represents the  
14   surrounding area.

15                  MR. GROSSMAN:   Surrounding area.   So you are  
16   outside of the surrounding area as defined by staff, if I  
17   understand correctly.

18                  THE WITNESS:   That's definitely above the yellow  
19   line there.

20                  MR. GROSSMAN:   All right.   And you are, what is the  
21   distance between your house and the site?   What's the scale  
22   on that, Mr. Landfair?

23                  MR. LANDFAIR:   It's the scale of one inch to 150  
24   feet.   We're getting a scale set up.

25                  MR. GROSSMAN:   Okay.   So we're getting a scale.

1     Maybe Mr. Landfair, you can scale that off. Let me swear  
2     you in. Hold on one second. I get about 1500 feet, just  
3     looking at it.

4             MR. LANDFAIR: It's difficult to say because his  
5     property is off the exhibit, but we're estimating 1200 feet.

6             MR. GROSSMAN: Okay. All right. Thank you, sir.

7             MS. BAR: That's the only questions.

8             MR. GROSSMAN: Mr. Knopf, do you have any  
9     questions?

10            MR. KNOPF: I have no questions.

11            MR. GROSSMAN: Thank you, Mr. Dyer. I appreciate  
12     your coming down very much.

13            THE WITNESS: Thank you.

14            MS. BAR: And I'd like to call Bob Youngentob as  
15     my first witness.

16            MR. YOUNGENTOB: Thank you, Mr. Hearing Examiner.

17            MR. GROSSMAN: Do you usually go by Robert or Bob?

18            MR. YOUNGENTOB: Bob.

19            MR. GROSSMAN: Would you raise your right hand,  
20     please?

21            (Witness sworn.)

22            MR. GROSSMAN: All right. You may proceed.

23                     STATEMENT OF ROBERT YOUNGENTOB

24            THE WITNESS: Hearing Examiner Grossman, for the  
25     record, my name is Bob Youngentob, and I'm president of EYA.

1 Just by way of background, EYA is located in Bethesda,  
2 Maryland. We've been here since, I guess about six years  
3 now. Our office is in Bethesda. Prior to that we were  
4 located in Northern Virginia.

5 I personally grew up in Montgomery County. I  
6 lived here when I was 13 in 1973, went to Walt Whitman High  
7 School, and really find myself nested in Montgomery County,  
8 not unlike citizens who testify sometimes against us as  
9 developers.

10 My personal background, I went to Lehigh  
11 University, studied economics; was a banker. Then I went  
12 onto business school. And it was at that point I had my  
13 first experience in real estate, in my first or second year  
14 of business school.

15 I came out of business school and went right to  
16 work for the JBG Companies and the Holiday Corporation, a  
17 joint venture. I stayed there for about a year and a half,  
18 and then ended up at the Holiday Corporation for five years.  
19 And then in 1992 left the Holiday Corporation to start EYA.  
20 And I'll give you some background on EYA.

21 I have done nothing but urban infill residential,  
22 as our company was founded in 1992 with that sole purpose.  
23 And I'd like to give you a little bit of background about  
24 EYA, and then kind of back up.

25 I know one of the questions will be whether or not

1 I can be qualified as an expert in urban infill. And just,  
2 I have --

3 MR. GROSSMAN: Well, before you get into that, are  
4 you proposing this witness as an expert?

5 MS. BAR: Yes, I will be proposing him as an  
6 expert in urban infill. He has previously been, testified  
7 in, for this body as an expert in urban infill development.  
8 And so we can go through a lot more of his background  
9 materials prior to having him admitted, but that is --

10 MR. GROSSMAN: I don't, well, first of all, I  
11 don't recall him being listed as a potential expert in your  
12 submission, prehearing submission.

13 MS. BAR: Because at the time of the prehearing  
14 submission I don't think he had been admitted. He had not  
15 been admitted in this forum as an expert. And I should have  
16 revised that, but frankly, I didn't think of it.

17 MR. GROSSMAN: All right. Mr. Knopf?

18 MR. KNOPF: We have no objection to having him as  
19 an expert.

20 MR. GROSSMAN: All right. So do you have a resume  
21 that you want to submit for him?

22 MS. BAR: Yes. There's a resume in the record.

23 MR. KNOPF: What was the area of expertise?

24 MS. BAR: In urban infill development.

25 THE WITNESS: Do you want me to go through



1 additional background or --

2 MR. GROSSMAN: Well, hold on one second.

3 THE WITNESS: Sure.

4 MR. GROSSMAN: Let me look at your resume. What's  
5 the exhibit number?

6 MS. BAR: I think it's actually, I'm not sure. I  
7 actually think I'm thinking of the other zoning case that  
8 it's been submitted into the record of. So I would have to  
9 get it from that zoning case. So why don't we have  
10 Mr. Youngentob go through his background, his educational  
11 background?

12 MR. GROSSMAN: All right. Go ahead, sir.

13 THE WITNESS: So as I mentioned, I've been doing  
14 urban infill development for about 25 years. EYA as a  
15 company has been recognized both locally and nationally with  
16 more awards than any other local firm specializing in this  
17 particular area, really in residential development.

18 We've won the Urban Land Institute, which is  
19 really the think tank for almost the entire real estate  
20 industry, with their award of excellence. We've been  
21 recognized by the National Association of Home Builders as  
22 America's best builder, both in 2000 and 2009.

23 Again, with our focus on smart growth and infill  
24 development, I have lectured, guest lectured at Harvard  
25 Business School, Lehigh University, the Johns Hopkins Real

1 Estate Program, the University of Maryland Real Estate  
2 Program, as well as Catholic University Architecture School.

3 And again, this is all I do, and this is all EYA focuses on.

4 MS. BAR: And I can get the resume for you, for  
5 the record.

6 MR. GROSSMAN: Do you have anything further  
7 regarding his qualifications? What's the, you said he  
8 testified before this body as an expert in urban infill  
9 development, a field that has not previously been suggested  
10 as a field of expertise. Usually it's land planning or a  
11 broader category.

12 MS. BAR: Right. Yes, it is not one of the  
13 traditional fields. We, in fact, would be happy to have him  
14 admitted as an expert, a more general expert in land  
15 planning, but quite frankly, given his specific, it's like  
16 rather than being a general medical professional, it's a  
17 very, was a more defined field of expertise. And the  
18 previous hearing examiner that he appeared before, felt that  
19 it was more appropriate to qualify him in a more limited  
20 manner.

21 MR. GROSSMAN: Okay. And so what case are we  
22 talking about?

23 MS. BAR: This was in G-897 in the Chelsea School  
24 case.

25 MR. GROSSMAN: G-892?

1 MS. BAR: Excuse me, G-892, the Chelsea School  
2 case.

3 MR. GROSSMAN: All right. So that's very  
4 recent --

5 MS. BAR: Yes.

6 MR. GROSSMAN: -- testimony. All right. And any  
7 other testimony as an expert, sir?

8 THE WITNESS: Not in Montgomery County, no.

9 MR. KNOPF: May I ask a question?

10 MR. GROSSMAN: I'm going to get you in a second.

11 MR. KNOPF: All right. I'm sorry.

12 MR. GROSSMAN: Anything further regarding his  
13 qualifications as an expert in urban infill development?

14 THE WITNESS: The only other thing is, I've been  
15 asked to serve on Governor O'Malley's smart growth task  
16 force. I'm working there on housing policy for the State of  
17 Maryland. I was also appointed to a District of Columbia  
18 task force on housing by the previous administration, Mayor  
19 Fenty's administration.

20 MR. GROSSMAN: I mean, there are always issues  
21 when presumably he's also a fact witness in this case. And  
22 there are always issues when you have somebody who you're  
23 attempting to call as both a fact witness and an expert.  
24 But in any event, I'll turn to Mr. Knopf. You have  
25 questions regarding the expertise?

1 MR. KNOPF: I just have one question.

2 VOIR DIRE EXAMINATION

3 BY MR. KNOPF: Q Do you have any projects,  
4 have there been any projects that you've constructed,  
5 townhouse projects that are not within walking distance of  
6 Metro?

7 A Yes.

8 Q Could you give us the names of those, or an  
9 example?

10 A Sure. In Montgomery County --

11 Q In the County, yes.

12 A Park Potomac, which was recently completed, 150  
13 townhomes at the intersection of Seven Locks and Montrose  
14 Road; Falls Road, which is in the City of Rockville, still  
15 in the County limits, but within the City boundaries of  
16 Rockville. Numerous projects in the District and also in  
17 Virginia as well.

18 MR. KNOPF: Okay. Thank you.

19 MR. GROSSMAN: All right.

20 MR. KNOPF: National Park Seminary, as well.

21 BY MR. KNOPF:

22 Q That's in the District?

23 A No, that's in Montgomery County, in Silver Spring.  
24 Again, you know, the question I think you asked was not  
25 within walking distance of Metro.

1 Q Right.

2 A I think was the question. It's probably about  
3 three-quarters of a mile to a Metro station, but I don't  
4 consider that necessarily walking distance.

5 MR. GROSSMAN: Mr. Dyer, did you have any  
6 questions regarding this individual's expertise?

7 MR. DYER: No, sir.

8 MR. GROSSMAN: You mentioned, in terms of your  
9 education, a business school education, college education.  
10 Do you have any formal education in terms of land planning  
11 or urban infill development?

12 THE WITNESS: At the time, smart growth, when I  
13 graduated business school, I mean, I did have classes in  
14 real estate at business school, but no formal education in  
15 land planning. It's really the result of 25 years of doing  
16 nothing but urban design, laying out site plans, evaluating  
17 properties as they made sense for urban, addressing  
18 environmental concerns, structural concerns, to see if they  
19 were appropriate for potential residential development in  
20 urban infill locations.

21 MR. GROSSMAN: I have to tell you, I have real  
22 concerns about having the president of the company that's  
23 the applicant submitting himself as an expert, based on his  
24 experience doing the kind of development that he is  
25 proposing to do here. It raises issues in my mind about the

1 independence of the expert opinion here, because he  
2 obviously has a direct interest in the outcome. So it's  
3 rather unusual to have this situation presented.

4 I mean, generally speaking, an expert can be  
5 accepted for the testimony if he aids the fact finder in  
6 making a decision beyond the ken, and can offer evidence  
7 beyond the ken of the average layman. I think that he  
8 probably qualifies in that sense because of his experience.  
9 I am concerned about certifying him as an expert.

10 Why don't we not certify him as an expert, and  
11 just hear what he has to say about this proposal. And you  
12 have a land planner, Mr. Landfair, that you intend to call  
13 who I'm sure can testify. And I'd be more comfortable that  
14 way. If you want to press the point, we can go further on  
15 that.

16 MS. BAR: No, that's totally fair. I think we've  
17 made, I have clients who are developers. Yes, you make a  
18 good point in terms of the interest. Some of them are  
19 experience, but none have been as experienced in this niche  
20 as Mr. Youngentob. So he is unusual in that sense. But I  
21 think we've made that point, and that's the important point.

22 MR. GROSSMAN: All right.

23 MS. BAR: All right. Thank you.

24 THE WITNESS: Thank you. I'm going to use a short  
25 PowerPoint presentation to make most of my testimony. And I

1 want to submit that in hard copy.

2 MR. GROSSMAN: Yes.

3 THE WITNESS: I guess it will be Exhibit 41.

4 MR. GROSSMAN: 41. Are the individual slides  
5 identified in some numerical way so that we can -- that's  
6 the problem with Powerpoint presentations in terms of  
7 evidence.

8 (Exhibit No. 41 was  
9 marked for identification.)

10 THE WITNESS: They are not, but we can introduce  
11 them as Exhibit 40A, B, C, D as we go.

12 MR. GROSSMAN: So 41, I guess, is the cover sheet.

13 THE WITNESS: 41. 41 would be the cover sheet.

14 MR. GROSSMAN: And perhaps what we can do is,  
15 Ms. Bar, I'm going to ask you, I'll hand you back Exhibit  
16 41.

17 MS. BAR: Yes.

18 THE WITNESS: Sorry.

19 MR. GROSSMAN: And you can label each slide  
20 appropriate so that we can identify what they are for the  
21 record.

22 THE WITNESS: So Exhibit 41A is an introductory  
23 slide. And as I mentioned, EYA is a specialist is urban for  
24 sale redevelopment. We've been doing this for almost 20  
25 years now, a 19-year history. We've developed over 30

1 communities throughout the Washington Metro area, over 2,000  
2 homes, many of which have been located in Montgomery County.

3           The photographs that are on this page and one that  
4 I referenced previously is the top picture is Park Potomac  
5 located at Montrose and Seven Locks Road. The picture at  
6 the lower left is a picture of some of the townhouses at  
7 Falls Grove, and the picture on the lower right is  
8 photographs, is a photograph of some townhomes that we built  
9 at downtown Silver Spring at Cameron Hill on a site that was  
10 purchased from Montgomery County within walking distance of  
11 the Metro.

12           We consider ourselves smart growth developers, and  
13 there's a lot of buzz around the concept of smart growth,  
14 and the idea of basically no longer pushing development  
15 further and further out into, you know, the agricultural  
16 less developed areas, but really concentrating development  
17 in areas that benefit from existing infrastructure, such as  
18 a good road network, pedestrian and bicycle trails, existing  
19 utilities, existing infrastructure, and also existing road  
20 networks, as well as access to public transportation.

21           Our tag line at our firm is life within walking  
22 distance. And we really try to focus all of our  
23 developments within situations where people have amenities  
24 that they can walk to, and therefore place less reliance on  
25 their car.



1           The next item I'll refer to will be 41B. This is  
2 really kind of a change in the philosophy around development  
3 that I think is occurring both locally and nationally. It's  
4 identified in the County Council's housing policy as a  
5 portion of the general plan that's out there today that was  
6 recently approved, the idea of, again, pushing development  
7 into more urban areas, you know, reinforcing the commitment  
8 to the agricultural preserve in the County, and providing  
9 new housing opportunities for the growth that's coming to  
10 Montgomery County in these more urban areas.

11           Not only is this a phenomenon in Montgomery  
12 County, but obviously there are demographic changes  
13 occurring throughout the population. Our baby boomers, at  
14 which I am at the very tail end of, are aging and looking  
15 for alternative lifestyles to just the typical single family  
16 home environment that many of us have appreciated for so  
17 long.

18           They want situations where they have lower  
19 maintenance, where they have these access to recreational as  
20 well as retail amenities. And so the combination of the  
21 demographics with aging baby boomers, younger professionals  
22 coming into the workforce, no longer viewing the single  
23 family home in the suburbs as the American dream, but having  
24 the requirements of both husband and wife to be working, and  
25 therefore greater accessibility; the desire for shorter

1 commutes, have really emphasized this desire for people to  
2 want to live in closer in locations and have shorter  
3 distances and, again, better access to amenities.

4               So our company has really focused on that  
5 lifestyle change. And this was something that we did before  
6 the idea of smart growth was really coined. And so it's  
7 something that we are totally committed to. And, you know,  
8 we're really trying to create, you know, our developments,  
9 we believe, are quality of life improvements for all County  
10 residents.

11              We do need to provide new housing opportunities  
12 for the growth that's coming to Montgomery County, but we  
13 need to do it in a responsible way. And we believe that the  
14 developments that we've already successfully completed in  
15 the County, and this development included, helps to further  
16 that goal, of providing developments in the right locations  
17 for the right purpose and the right type of housing styles.

18              The next slide will be 41C, and I'll probably lose  
19 track of the letters as I go through these, but I'll try.  
20 So 41C. This is just a map of the developments that we have  
21 completed as a company. And again, just using the pointer,  
22 I am just pointing to the outer loop, basically, of the  
23 beltway itself, as highlighted on this particular image.  
24 And then the Metro locations, the Metro map is overdrawn  
25 there.

1           You can see we've done a lot of developments in  
2   Old Town Alexandria, a number in Arlington County, a number  
3   in the District, and then scattered throughout Montgomery  
4   County and along the County line in downtown Silver Spring  
5   and Wheaton, National Park Seminary, the Strathmore  
6   Grosvenor Metro, Strathmore Condominiums, and some projects  
7   also right on the line at Military and 33rd Street in the  
8   District of Columbia. Again, just further evidence of this  
9   commitment to urban design and urban development within the  
10  Beltway.

11           Next slide will be 41D. This is an aerial  
12  photograph of the area surrounding the block plant. And I  
13  put this up, basically, just for orientation. River Road is  
14  located on the upper right hand side of this particular  
15  photograph.

16           On the lower left hand side you can see just a  
17  small section of Massachusetts Avenue, and then this is  
18  Little Falls Parkway that comes, basically, along this  
19  point, and that being to River Road and Mass Ave and the  
20  block plant located in this particular location.

21           Just by way of history --

22           MR. GROSSMAN: And I presume that north is  
23  straight up on this particular exhibit?

24           THE WITNESS: Yes.

25           MR. GROSSMAN: Okay.

1                   THE WITNESS: Just by way of history, we, you  
2 know, we are constantly looking for opportunities that we  
3 believe represent the type of smart growth that we hope to  
4 continue developing. This project was actually presented to  
5 us in discussions. We're in contact with a lot of different  
6 brokers in the community. This was presented to us as a  
7 potential opportunity.

8                   The owner, Peter Hoyt, has leased the property to  
9 Vetco Block Manufacturing for a number of years, and it was  
10 something that, you know, having lived in this community,  
11 I've driven by it, I don't know, 10,000 times, it wouldn't  
12 surprise me, you know, since I've lived here in 1973.

13                  And, you know, it's always been one of those kind  
14 of anomalies, I think, where you drive down Little Falls  
15 Parkway. You see this feeling of park. You don't really  
16 feel what's happening on Butler Road as much, because I  
17 think it's a little bit closer to River Road and the  
18 activity.

19                  But once you get past some of the activity of  
20 Butler, then you see kind of small break and then all of the  
21 sudden there is this block plant. So it always struck me as  
22 something that really didn't fit in the overall concept of  
23 this setting of the park. And there it was.

24                  So we were intrigued by it. We met with Mr. Hoyt  
25 on a number of occasions, started to do our research into

1 the contract. And one of the things that we studied was,  
2 obviously, the master plan recommendations.

3 And in the 1982 sector plan there is a very  
4 specific recommendation for this particular property, for RT  
5 development. It is recommended at the RT-10 as opposed to  
6 the RT-15. That was something that gave us some pause and  
7 asked us, you know, internally, to try to figure out how we  
8 would approach that.

9 But there is also very specific language saying  
10 that it would only be appropriate for residential town home  
11 density if there was access to Little Falls Parkway.

12 And so, you know, taking off our zoning hat but  
13 really putting on our marketing hat, you know, we studied  
14 the area and felt, honestly, not being around when that 1982  
15 master plan was developed and the discussions that caused  
16 staff to put that language in, from a very practical  
17 standpoint, we felt that without that access easement,  
18 without access to Little Falls, that the site was really not  
19 appropriate for residential development; that you could not  
20 really sell market rate homes that would support the  
21 redevelopment of this property if you were going to be  
22 driving the residential owners down Butler Road to access  
23 the site, that it was really critical to get the access off  
24 of Little Falls Parkway for this to function as a true  
25 residential development.

1           So our proposal is to replace the Vetco Block  
2   Plant who has decided in conjunction with Mr. Hoyt and his  
3   lease, to relocate, with 25 townhomes with two-car garage  
4   parking and five moderately priced dwelling units, MPDU's,  
5   with one-car garage parking and an additional eight surface  
6   parking spaces on the property.

7           The primary access will be off of Little Falls  
8   Parkway for residents, and because Little Falls has a  
9   prohibition against commercial vehicles, which is signed as  
10   you enter Little Falls Parkway at River Road and other  
11   locations, we felt that you had to have another means of  
12   access. And therefore, a secondary access off of Butler  
13   Road for commercial vehicles, trash pickup, you know,  
14   potentially delivery services and things like that.

15           So we wanted to make sure there was the  
16   accommodation for that purpose. And we do believe that the  
17   proposal is in general conformity with the County master  
18   plan.

19           Next will be 41 --

20           MS. BAR: F.

21           THE WITNESS: -- F. 41F. 41F speaks to basically  
22   the process that we started once we kind of proceeded past  
23   the very preliminary stages in our interest in the property.  
24   And this goes back to June of 2010 when we had some initial  
25   meetings with the Citizen's Coordinating Committee on

1 Friendship Heights.

2           We met again on September 15th, then October 20th  
3 to discuss the concept of the easement with Montgomery  
4 County. At the same time, we were having multiple meetings  
5 with the Parks Department. I believe Mr. Goddard mentioned  
6 Michael Mawr at the Parks Department, Montgomery County  
7 Parks Department who was kind of leading the process on  
8 behalf of the County, who expressed interest in the idea,  
9 based on the master plan recommendation.

10           You know, we identified other precedents where  
11 there were situations where parks had been crossed for  
12 easement purposes. And we proceeded on that process with  
13 Montgomery County to develop the concept of an easement  
14 agreement. The actual easement agreement is, defines an  
15 area of approximately 4500 square feet. I know we'll make  
16 the actual agreement available to you.

17           And it also provides compensation to the County in  
18 the magnitude of, I believe it's \$500,000 that specifically  
19 addresses particular park improvements in terms of, you  
20 know, some of the public benefits, improvements to possibly  
21 the Capital Crescent Trail, but improvements also to the  
22 stream and the park itself.

23           So there was, we felt, significant compensation  
24 being offered to Montgomery County. And eventually they  
25 felt the same way as we went through the process. And as

1   you've heard testimony, that concept approval of the  
2   easement itself was originally received in January of 2011.

3               Then we proceeded to the full Commission which  
4   includes both Montgomery County Park and Planning as well as  
5   Prince George's Park and Planning Commissioners. And that  
6   was received on February 16th.

7               MR. GROSSMAN: Let me interrupt for a second.

8               THE WITNESS: Yes.

9               MR. GROSSMAN: Ms. Bar, did they, does the  
10   Planning Board publish an agenda of these meetings for, well  
11   in this case, both the Planning Board initial January 20  
12   meeting, and then February 16 full Commission meeting, and  
13   the June 16 Planning Board public hearing? Do they publish  
14   an agenda that indicates these sessions?

15              THE WITNESS: Yes, they do.

16              MS. BAR: Yes.

17              MR. GROSSMAN: Do you -- Ms. Bar?

18              MS. BAR: Yes. Yes.

19              MR. GROSSMAN: Okay. And, okay, one other thing.

20   Am I correct in saying that you haven't submitted a copy of  
21   this easement to me yet?

22              MS. BAR: Well, I, through this witness I'm going  
23   to ask him if the resolutions that he just referred to and a  
24   copy of the draft easement. It has not been fully executed  
25   yet, but it has been approved. It's just that they haven't



1   gone through the execution process yet.

2                   MR. GROSSMAN:   Well, what is the, how does that  
3   process work?

4                   MS. BAR:   It is, there have been just some minor  
5   changes in the language, and at this juncture I believe that  
6   we're just waiting to get the final document executed.  
7   Maybe Mr. Thakkar can speak to that issue more specifically.  
8   He's been handling the easement.

9                   MR. GROSSMAN:   Well, I'm just saying, first of  
10   all, as a general matter of process for an item such as  
11   this, when the Planning Board approves it, as they did  
12   apparently on January 20, and then you have the full  
13   Commission approving it, there can be changes after that  
14   without going back to them again for approval?  Is that what  
15   you're suggesting?  I don't know.  You tell me.

16                  MS. BAR:   Yes, I think the agreement has been, all  
17   the provisions of the agreement, the substantive provisions  
18   have been approved by the Planning Board.  It is, at this  
19   point I think it is some wordsmithing that's going on, and  
20   it just has not been finally executed at this juncture.

21                  One suggestion I may have is, I mean, it could  
22   happen within the next couple of weeks, but I'm not, it's  
23   not clear when who will be in town because of vacations, et  
24   cetera, so we could add a binding element.  Obviously, we  
25   know we need the easement before we can proceed with the

1 development. So we would be happy to add a binding element.

2 I think it's the --

3 MR. GROSSMAN: Well, you already have binding  
4 elements that mention the easement.

5 MS. BAR: Right. But we could make something  
6 that's more specific as to, you know, referencing the fact  
7 that it is not executed yet, but that it will have to be  
8 executed. I know it's implied with all of the other binding  
9 elements, but if you want we could add one that says  
10 specifically that it is required that it be executed.

11 MR. GROSSMAN: Well, before I suggest doing that,  
12 or accept doing that, I'm just trying to understand the  
13 process for approval of these easements. And -- yes,  
14 Mr. Youngentob?

15 THE WITNESS: Let me try and address that. There  
16 was, I would describe it, conceptual approval isn't the  
17 right terminology, but the process of whether or not the  
18 Planning Board -- first, it had to go even before it went to  
19 the Planning Board it went through kind of the Parks  
20 Department and was voted on kind of internally within Parks.  
21 And that was prior to January 20th.

22 MR. GROSSMAN: You mean the staff review?

23 THE WITNESS: The staff, correct.

24 MR. GROSSMAN: Okay.

25 THE WITNESS: And so when it eventually went to

1 the Planning Board, it was more of a conceptual approval  
2 without the specific language of the actual document itself.  
3 From that point it did go to, again, the full Commission.  
4 There was general language about the easement itself, but  
5 not the final document.

6 And then from that point it also had to go back to  
7 the Planning Board for final approval of the document. And  
8 that's kind of where we are today. And I think the staff  
9 was given some ability to, you know, tweak language here or  
10 there as they are, but not conceptually.

11 MR. GROSSMAN: So the resolution approving it,  
12 that would be, presumably, from the June 16 Planning Board  
13 hearing. That specifically authorizes the staff to tinker  
14 with the language?

15 MR. KNOPF: I think --

16 MR. GROSSMAN: Mr. Knopf.

17 MR. KNOPF: Yes, this is news to me. My  
18 understanding was that they voted. The language was  
19 approved. I thought we were only tinkering with the  
20 language on the binding elements, not with the actual  
21 easement agreement. I thought that was approved. And I  
22 certainly do not -- I think we're mixing up two different  
23 things.

24 THE WITNESS: Okay. Yes. We have no intention of  
25 actually changing the language of the easement that was

1 approved.

2 MR. GROSSMAN: Okay.

3 MR. KNOPF: And I thought that was approved and  
4 that Park and Planning was not changing any language on the  
5 easement.

6 THE WITNESS: That's correct.

7 MS. BAR: That's correct.

8 MR. KNOPF: So that is, yes. Thank you very much.

9 So there was, at this hearing on the rezoning, the binding  
10 elements came up, obviously, and the Planning Board had  
11 wanted to see them tweaked.

12 MR. GROSSMAN: Right.

13 MR. KNOPF: My understanding is, EYA and the Board  
14 need to be included on the tweaking, and that's going to be  
15 presented to you, but that does not change, in any way, the  
16 easement as approved by Park and Planning.

17 MS. BAR: Right.

18 MR. GROSSMAN: I also don't understand, why is it  
19 that the easement wasn't submitted here. If it was approved  
20 June 16th, why wasn't it submitted as a part of the record  
21 here about a month ago, yes, a month ago, more than a month  
22 ago? I mean, you have left me at a disadvantage, because I  
23 like to read the record in advance, or read the file in  
24 advance and know what's going on. But I have nothing about  
25 the easement.

1                   MS. BAR: I apologize. I think the whole, number  
2 one, the proceedings were, I guess, in late June, and then  
3 the draft, the easement, the actual agreement, it just  
4 hasn't been fully executed. And I think the hope was that  
5 it would be fully executed and submitted, but that hasn't  
6 happened. So it was, I agree, it's left it a little bit  
7 open.

8                   MR. GROSSMAN: Who has to execute it? Who has to  
9 execute the agreement?

10                  MS. BAR: Park and Planning, the Maryland National  
11 -- EYA and the Maryland National Capital Park and Planning  
12 Commission, the actual Commission.

13                  MR. GROSSMAN: But the exact language is now, as I  
14 understand it, has been approved. And why hasn't it been  
15 executed yet?

16                  THE WITNESS: Again, part of this is, there's a  
17 little bit of a chicken and egg process going on. Without  
18 the rezoning, then we have no intention of fulfilling the  
19 easement obligations, and vice versa. They don't intend to  
20 grant the easement unless the rezoning is approved. So  
21 there's a little bit of chicken and an egg.

22                  MR. GROSSMAN: All right. So --

23                  THE WITNESS: We have to have the easement to get  
24 the zoning, but the reality is, without the zoning then we  
25 go away, the site stays industrial, and the access remains

1 Butler Road.

2 MR. GROSSMAN: Okay. So in other words, the  
3 easement that you are going to be submitting is the  
4 unexecuted easement, and that will, whether or not it's  
5 executed will depend on whether the Council grants the  
6 rezoning application. Is that, do I understand that  
7 correctly?

8 MS. BAR: No.

9 MR. GROSSMAN: Okay. Well somebody needs to  
10 explain it to me.

11 MS. BAR: I think it may be --

12 MR. GROSSMAN: That's what I understood  
13 Mr. Youngentob to just tell me.

14 THE WITNESS: I thought that was the case. I may  
15 be incorrect.

16 MS. BAR: I don't think it's effective unless the  
17 zoning is granted, but it may be executed prior to the  
18 zoning being granted.

19 MR. GROSSMAN: Well what's the plan? Do you want  
20 a recess to talk about it?

21 MS. BAR: Yes.

22 MR. GROSSMAN: All right. Why don't we take a  
23 recess. It's 11:30. We'll come back at 11:35. Is that  
24 enough time?

25 THE WITNESS: That's plenty.

1 MS. BAR: Yes.

2 MR. GROSSMAN: All right. In the meantime,  
3 perhaps, Ms. Bar, why don't you give me a copy of that so I  
4 can actually see it.

5 THE WITNESS: Would you like a copy?

6 MS. BAR: Yes. Okay. I wanted to submit all  
7 three to the record.

8 (Whereupon, at 11:29 a.m., a brief recess was  
9 taken.)

10 MR. GROSSMAN: Just as we were recessing, Ms. Bar  
11 handed me three documents. Let's mark them as exhibits.  
12 And also, Ms. Bar, while we're at it, do you have anything  
13 regarding the, from the June 16 Planning Board meeting?

14 I see here what you've handed me is the attachment  
15 A, which is the draft agreement for the easement, and a  
16 resolution of the entire Planning Commission. And then I  
17 see something also from the Marcella Hosteller, executive  
18 director for the Planning Commission. Do you have anything  
19 from the Planning Board regarding the June 16 meeting?

20 MS. BAR: I don't have a resolution. I can submit  
21 to the record the, I guess the minutes of that, where they  
22 approved it. They did not issue a resolution.

23 MR. GROSSMAN: Is that there general practice for  
24 something like this?

25 THE WITNESS: On the 16th?

1 MS. BAR: On the 16th, yes.

2 THE WITNESS: They didn't do a resolution on the  
3 16th?

4 MS. BAR: Yes. I think because it was an  
5 agreement, and because I had to sign the agreement, they  
6 probably didn't see the need to also have a resolution,  
7 because they would be executing the agreement.

8 MR. KNOPF: Yes. We're missing some links here.  
9 When the easement originally came up, it was treated by Park  
10 and Planning as a property they may be disposing, and I'm  
11 using my term, disposing the property. So I think they met  
12 among themselves, the Planning Commission, because it was  
13 considered like a sale or acquisition of property. And they  
14 decided that they would go forward and have an easement.

15 That was, the Planning Board itself sat in executive  
16 session, I guess, and did that. Then they came out with a  
17 public hearing saying, we're proposing to have such an  
18 easement.

19 MR. GROSSMAN: That's in January.

20 MR. KNOPF: I think it was January.

21 MS. BAR: Yes.

22 MR. KNOPF: Yes. We're proposing to have such an  
23 easement. There was a public hearing. We attended and  
24 said, and they said, we're going to have -- we're proposing  
25 an easement. We have to make a finding that the park land



1 is not needed so we can have such an easement. And we are  
2 proposing that that easement be accompanied by an agreement  
3 which had the following conditions that were in the  
4 easement.

5 We had a hearing and I testified at that saying,  
6 we had a problem with everything, but if you are going to go  
7 ahead with the easement, we had a problem with the  
8 agreement, because we didn't think it contained sufficient  
9 provisions.

10 At the conclusion of the hearing, the Planning  
11 Board voted. They made a finding that they could go ahead  
12 with the easement because they did not feel it interfered  
13 with the park program, and whatever language.

14 But they said that they agreed that the easement  
15 presented to them -- sorry, the agreement presented to them  
16 was not satisfactory, and that it could use improvement.  
17 And they suggested that me and other parties, whatever, sit  
18 down and see if they had some suggestions.

19 MR. GROSSMAN: This was all in January 2011?

20 MR. KNOPF: At the January, yes.

21 MR. GROSSMAN: All right.

22 MR. KNOPF: At the January, but they voted at the  
23 January meeting to grant the easement subject to an  
24 agreement to come back to them for approval.

25 MR. GROSSMAN: Right.

1                   MR. KNOPF:   Okay.   And I gather that any easement  
2   granted was subject to a resolution when it happened.   But  
3   then later we came back with the new language of the  
4   agreement.   And that's what was approved on June 16th, which  
5   is attachment A.   It says attachment A, I gather, because it  
6   was attached to the staff report that was submitted to the  
7   Planning Board for approval.

8                   And I would suggest that maybe that's what you  
9   want to put in --

10                  MR. GROSSMAN:   Well, what I haven't seen is any  
11   resolutions at all from the Planning Board itself.   I've  
12   seen something from the Commission, the resolution from the  
13   Commission which is signed.   And this is, the question is,  
14   is it dated?

15                  MR. KNOPF:   Well, I'm not sure, I'm not sure the  
16   Planning Board --

17                  MR. GROSSMAN:   February 16.

18                  MR. KNOPF:   February.   I don't know if the  
19   Planning Board, I can't comment on that, can grant the  
20   resolution.   I think the full Commission had to grant the  
21   resolution.   And that's what's February 16th.

22                  MS. BAR:   Yes.

23                  MR. KNOPF:   The full Commission granted the  
24   easement.

25                  MR. GROSSMAN:   So there are, you're saying I

1    should not expect any resolutions from the Planning Board  
2    itself, just the one from the Commission?

3                   MR. KNOPF:  I'm unaware of it.  I'm not going to  
4    -- I'm just unaware of any.  The thing that we were  
5    concerned with is that, because it went through a lot of  
6    drafts, what the agreement was.  And I gather this is the  
7    final agreement that was worked out between the coordinating  
8    committee and the EYA and the staff all sat down.  And this  
9    is what came out.  And the Planning Board then approved that  
10   at their meeting.  And I don't know what their procedures  
11   are by resolution or whatever, but I guess an agreement  
12   maybe doesn't need a resolution.  I don't know.

13                  MR. GROSSMAN:  So first of all, let's mark Exhibit  
14   42 as the February 16, 2011, resolution of the Maryland  
15   National Capital Park and Planning Commission.  And that is  
16   approving the granting of the easement setting forth some  
17   terms regarding that.

18                  And then there's something labeled attachment A,  
19   draft agreement, presuming to set forth the agreement  
20   between EYA and the Planning Commission which I presume is  
21   what was approved in the February 16 resolution.  Is that  
22   correct?

23                               (Exhibit No. 42 was  
24                               marked for identification.)

25                  MS. BAR:  No, that's what was approved at the June

1 16th, 2011 --

2 MR. GROSSMAN: Okay. All right.

3 MS. BAR: -- Planning Board.

4 MR. KNOPF: And may I suggest for clarity we  
5 strike the word draft.

6 MS. BAR: Yes.

7 MR. KNOPF: I'm afraid that this is the adopted --

8 MS. BAR: Yes.

9 MR. GROSSMAN: Do you have a copy that says  
10 agreement without draft on it?

11 MS. BAR: Not with me, no. I can submit that as a  
12 substitute exhibit, or we can cross it out.

13 MR. GROSSMAN: Well, right now I'm going to just  
14 leave it as you're going to submit the actual agreement  
15 afterwards. We'll make this as 42A would be the draft  
16 agreement. Attachment A. Attachment A.

17 MS. BAR: Mr. Grossman, I don't want to confuse  
18 the issue more, but the agreement is an attachment to the  
19 staff report that indicates --

20 MR. GROSSMAN: To the staff report regarding the  
21 easement.

22 MS. BAR: Right.

23 MR. GROSSMAN: Not the staff report for the  
24 rezoning.

25 MS. BAR: Regarding -- exactly. So that --

1 MR. GROSSMAN: That document?

2 MS. BAR: And why don't I submit that document  
3 also.

4 MR. KNOPF: Regarding the agreement.

5 MS. BAR: The agreement.

6 MR. KNOPF: Agreement.

7 MS. BAR: The agreement, yes.

8 MR. KNOPF: That's why it says draft, because it  
9 was submitted to the Planning Board for their approval, and  
10 that's what they adopted.

11 MR. GROSSMAN: And this attaches the resolution we  
12 talked about. Let me see. And it attaches the -- so why  
13 don't we leave the resolution itself as 42. We'll make 43,  
14 43 is going to be the staff report relating to the easement,  
15 relating to the easement agreement.

16 (Exhibit No. 43 was  
17 marked for identification.)

18 MS. BAR: Yes.

19 MR. GROSSMAN: June 16, 2011, staff report. All  
20 right. That's Exhibit 43. And then 43A is the draft  
21 agreement that is attached to it. And then you handed me  
22 another document dated July 12th, 2011.

23 MS. BAR: Yes, that's the National Capital  
24 Planning Commission approval of the agreement.

25 MR. GROSSMAN: Okay. Well, now it says, what it

1 says here is, the July 12 letter to the Executive Director.

2 So it's National Capital Planning Commission at its July 7,  
3 2011, meeting, approved the proposed action on the  
4 modification to the Little Falls Stream Valley Park general  
5 development to allow access easement.

6 I'm not sure that that's the same as saying  
7 approving the agreement, is it?

8 MR. KNOPF: I don't think they had to approve the  
9 agreement.

10 MS. BAR: Just the access, I guess. I stand  
11 corrected.

12 MR. KNOPF: Use of the park land.

13 MR. GROSSMAN: I don't --

14 MR. KNOPF: The National Capital has to approve  
15 the use of the park land. And presumably they based their  
16 approval on what they understood was the agreement. But  
17 they didn't get the agreement, I guess.

18 MR. GROSSMAN: They've also identify it as  
19 alternative C, environmental assessment prepared for the  
20 project. Do you want to explain to me what that means?

21 MS. BAR: I wasn't at that proceeding, so I've  
22 been trying to -- and not doing a very good job of  
23 explaining things that other people were handling. So why  
24 don't -- I think I've been referencing Mr. Thakkar, and  
25 we've been trying to -- he was at the hearing, so he can

1     probably better address that.   Do you want him to --

2                   MR. GROSSMAN:   Do you want to have him take the  
3     stand now?

4                   MR. THAKKAR:    Sure.

5                   MR. GROSSMAN:   Let's call this Exhibit 44.   And  
6     this is the July 12, 2011, letter of Michael Costa,  
7     Executive Director, Maryland National Capital Park and  
8     Planning Commission to Michael Mawr noting approval on  
9     July 7 by the Commission of the access easement.

10                                   (Exhibit No. 44 was  
11                                   marked for identification.)

12                   MR. GROSSMAN:   All right, sir.   Would you state  
13     your full name, please?

14                   MR. THAKKAR:    Aakash R. Thakkar.

15                   MR. GROSSMAN:   Would you raise your right hand,  
16     please?

17                                   (Witness sworn.)

18                   MR. GROSSMAN:   Ms. Bar, you may proceed.

19                                   DIRECT EXAMINATION

20                   BY MS. BAR:

21           Q     Mr. Thakkar, I understand that you were at the --

22                   MR. GROSSMAN:   Well, let's identify him.

23                   BY MS. BAR:

24           Q     Could you --

25           A     Sure.   My name is Aakash R. Thakkar, with EYA.

1 MR. GROSSMAN: What's your position?

2 THE WITNESS: I'm the senior vice president with  
3 EYA and I've been working closely on this project.

4 BY MS. BAR:

5 Q And I understand that you were at the National  
6 Capital Planning Commission proceedings at which they  
7 discussed the access easement on Little Falls Parkway. And  
8 could you just go through --

9 A Sure. So I was at the proceeding, and I was also  
10 the EYA staff member involved with working with the National  
11 Capital Planning Commission, working up to that at a hearing  
12 on July 7th.

13 To answer your specific question about alternative  
14 C, when we -- the process that we had to go through with  
15 MCPC requires filing an environmental assessment. So  
16 Montgomery County Parks Department together with EYA worked  
17 on an environmental assessment. The National Capital  
18 Planning Commission's key finding in a case like this is  
19 that there is no adverse environmental impact in terms of  
20 them granting the easement.

21 So the Parks Department, together with EYA, had to  
22 put together an environmental assessment. That was  
23 submitted to the National Capital Planning Commission staff.  
24 National Capital Planning Commission staff reviews that  
25 environmental assessment and then makes a recommendation to



1 the National Capital Planning Commission who then makes a  
2 finding on the particular case.

3 Just to back up, the National Capital Planning  
4 Commission had to find, had to give the County the authority  
5 to grant this easement. So there was a question around  
6 whether or not they had to approve the easement agreement.  
7 My understanding was they did not have to approve the  
8 easement. They simply had to approve Montgomery County  
9 allowing -- they had to simply approve Montgomery County  
10 allowing the Parks Department to get into an agreement with  
11 us to grant the easement.

12 And the reason for that is because the ground  
13 falls under the Capper Crampton Act, and any Capper Crampton  
14 Act ground, to my understanding, that is to be treated in  
15 this fashion, that it has to be approved by MCPC in order  
16 for the County to move forward with the action. So MCPC's  
17 approval had to be granted in order for the County to  
18 proceed.

19 MR. GROSSMAN: I'm sorry, what's alternate C?

20 THE WITNESS: Alternate C, so when we submitted  
21 this environmental assessment, and I can turn in to you a  
22 document which the staff recommendation from the National  
23 Capital Planning Commission staff to its Commission dated  
24 June 30th. Should I go ahead?

25 MS. BAR: Yes.

1           MR. GROSSMAN: We'll call this Exhibit 45. And  
2   that is June 30, 2011. I thought you said this was a staff  
3   recommendation, but this doesn't appear to be that. It  
4   appears to be actually from the Executive Director to --

5                               (Exhibit No. 45 was  
6                               marked for identification.)

7           THE WITNESS: Who is staff, my understanding is  
8   the Executive Director heads the staff of the National  
9   Capital Planning Commission, and they made a recommendation  
10   to the actual Commission.

11          MR. GROSSMAN: All right, to the Commission, all  
12   right, regarding --

13          THE WITNESS: Regarding their finding, regarding  
14   their finding of no adverse impact.

15          MR. GROSSMAN: Maryland National Capital Park and  
16   Planning Commission staff recommendation.

17          MS. BAR: It's the National Capital.

18          MR. GROSSMAN: Not the Maryland?

19          MS. BAR: Yes, it's the National.

20          MR. GROSSMAN: I guess that's true also of the  
21   Exhibit 44. That shouldn't say the Maryland National it  
22   should say the National Commission. And then let me see  
23   Exhibit 42. Exhibit 42 is. All right.

24                 So Exhibit 45 is the June 30, 2011, National  
25   Capital Park and Planning Commission staff recommendation --

1                   THE WITNESS:   National Capital Planning  
2   Commission.

3                   MS. BAR:    Planning Commission.

4                   MR. GROSSMAN:   No park.

5                   MS. BAR:    There's no park.

6                   MR. GROSSMAN:   All right.   National Capital  
7   Planning Commission.   All right.   I've got an extra P in  
8   there.   Regarding the easement.   All right.

9                   BY MS. BAR:

10            Q       And in that document do they discuss the  
11   alternatives, and can you go through that?

12            A       Sure.   So the question, you asked a question,  
13   Hearing Examiner about alternative C.

14                   MR. GROSSMAN:   Right.

15                   THE WITNESS:   So alternative C is the County and  
16   EYA's preferred location for the easement which will provide  
17   access from Little Falls Parkway to the property.   So when  
18   we prepared our analysis for the National Capital Planning  
19   Commission, there was an alternative A and an alternative B  
20   and an alternative C.

21                   The reason for that was, we needed to retain  
22   flexibility with regard to the exact location of the  
23   easement, because we were in the midst of discussing plans  
24   with community, with the County, et cetera, and couldn't be  
25   tied down to the exact location of the easement.

1           So NCPC requested from the County and developer  
2 alternatives, and alternative C is the location where we are  
3 currently showing on the conceptual development plan, that's  
4 where we're currently showing the access off of Little Falls  
5 Parkway to the subject property.

6           And so the National Capital Planning Commission  
7 staff recommended to the Commission that alternative C, the  
8 area where we're currently showing the access be the  
9 alternative that the Commission approves with regard to  
10 allowing the County to grant us the easement.

11           MR. KNOPF: And I believe you'll find the exhibit  
12 in there showing C, if you look at it.

13           THE WITNESS: As well as A and B.

14           MR. KNOPF: It matches up with what they're  
15 proposing.

16           THE WITNESS: Correct.

17           MR. GROSSMAN: So the precise location is now  
18 known of the easement?

19           THE WITNESS: The precise -- there is a location  
20 on the conceptual development plan. Clearly, should this  
21 case move forward, we have to go through site plan and go  
22 through that level of vetting with County staff.

23           MR. GROSSMAN: So site plan could conceivably  
24 change the precise contours of the easement area?

25           THE WITNESS: It could. It certainly could, sure.

1 And so alternative C, however, gives an area as opposed to  
2 precise contours. So we are likely within the area where  
3 the location will end up. And so NCPC staff was aware of  
4 that. NCPC staff talked to County staff, and the resulting  
5 recommendation was made for alternative C.

6 MR. GROSSMAN: Now, just so I understand where the  
7 Maryland National Capital Park and Planning Commission fits  
8 into all of this, because I haven't seen this procedure  
9 before. If, in fact, the National Capital Planning  
10 Commission gives its approval, as it has done in June --

11 THE WITNESS: July.

12 MS. BAR: July. July 7 was their --

13 THE WITNESS: July 7th, yes.

14 MR. GROSSMAN: Oh, I see, yes, I'm sorry, the  
15 report was June 30.

16 THE WITNESS: Yes. The hearing was July 7th and  
17 the subsequent letter.

18 MR. GROSSMAN: The actual, okay, it was July 7th.  
19 That has to follow all the other approvals from the Planning  
20 Board then from the Maryland National Capital Park and  
21 Planning Commission and then it goes to the National Capital  
22 Planning Commission? Is that what you're saying?

23 THE WITNESS: That is correct.

24 MR. GROSSMAN: So that's a three step procedure,  
25 not even counting staff?

1           THE WITNESS: Exactly. Exactly right. Right.  
2   And then in the final step, to our understanding was the  
3   NCPC approval. And actually the County, the County's  
4   agreement with us suggested that of course NCPC approval was  
5   necessary prior to execution of any final documents.

6           MS. BAR: Which is another reason why the document  
7   is not executed, because that just happened. In other  
8   words, the NCPS just --

9           THE WITNESS: PC.

10          MS. BAR: -- PC, excuse me, just happened on July  
11   7th. So it's been kind of an iterate process.

12          MR. GROSSMAN: So that the Exhibit 44, which I  
13   have, the July 12 letter, attached the July 7 approval that  
14   you're talking about from the National Capital Planning  
15   Commission. Okay. Now I understand it.

16          THE WITNESS: Hopefully, to close the issue, we  
17   now have all the government approvals, well, I should say  
18   the County has all of the approvals it needs to execute the  
19   document, and so that process is finished. We're simply at  
20   a point now where both parties need to execute the document  
21   that we've agreed on the final content with the County, and  
22   with the coordinating committee as well. So we believe that  
23   the document is final at this point in time.

24          MR. GROSSMAN: And was that process before the  
25   National Capital Planning Commission, was that a public

1 process?

2 THE WITNESS: It was. In fact, Mr. Dyer did  
3 testify at some length at that hearing, and I testified as  
4 well. And we had, you know, a discussion about it with the  
5 Commission.

6 MR. GROSSMAN: All right. Okay. I just wanted to  
7 understand the process here. I'm going to have to explain it  
8 in the report, and I didn't really understand it, because  
9 nobody submitted anything in advance of the hearing to  
10 explain it. As I say, I'd like to find out in advance of  
11 the hearing what's happened so I can be better prepared to  
12 understand the evidence.

13 THE WITNESS: Would it be helpful if we put  
14 together a memo just documenting the entire process?

15 MR. GROSSMAN: Well, at this point, I think I  
16 understand --

17 THE WITNESS: Okay.

18 MR. GROSSMAN: -- not that it's been explained.  
19 All right. Yes, sir.

20 MR. KNOPF: Is there any reason why the signed  
21 agreement couldn't be placed in the record, assuming the  
22 hearing examiner would leave it open to receive such a  
23 document, before this went to the Council with your  
24 recommendation, to get the agreement. MR. GROSSMAN:  
25 Right. And is there any -- all right, let's ask that

1 question. Is there any reason why the signed agreement  
2 couldn't be put in the record, or are you waiting for the  
3 signed agreement until -- how did we resolve that, until the  
4 zoning or is that not the process?

5 THE WITNESS: Sure. Our understanding was we  
6 didn't have to sign the document prior to this zoning case  
7 being completed.

8 MR. GROSSMAN: Your understanding from whom?

9 THE WITNESS: From the Parks Department that the  
10 two are sort of being treated as separate matters.

11 MR. GROSSMAN: The Parks Department, are we  
12 talking about technical staff at the Planning Board or are  
13 we talking about the National -- which?

14 THE WITNESS: The technical staff of the Planning  
15 Board.

16 MR. GROSSMAN: Okay.

17 THE WITNESS: The technical staff of the Planning  
18 Board.

19 MR. GROSSMAN: Who was it in technical staff who  
20 gave you that information?

21 THE WITNESS: We're working with Michael Mawr who  
22 is the technical staff that's been on this case throughout  
23 the process.

24 MR. GROSSMAN: So he told you, you didn't have to  
25 sign the agreement until you find out if you have a zoning



1 approval?

2 THE WITNESS: Just to be clear, he didn't say  
3 that. What he said was that the two are completely separate  
4 matters and can run on both tracks. What we thought was  
5 important in coming before you today is that we had all the  
6 approvals filed as necessary, such that we can now execute  
7 that document at the appropriate time.

8 MR. GROSSMAN: And that's the question. What's  
9 the appropriate time? So what is EYA saying is the  
10 appropriate time to execute that document?

11 THE WITNESS: I believe that the Parks Department  
12 now has some internal sign-offs that the document has to go  
13 through. And my understanding is, at the point in time when  
14 that would be done, from the completion of the process'  
15 perspective, that would be the appropriate time for the  
16 documents to be signed, for the document to be signed.

17 MR. GROSSMAN: I don't understand what that means.  
18 I mean, does that mean prior to my report, prior to the  
19 Council acting, after my report, after the Council acting?  
20 What does that mean?

21 THE WITNESS: It's a good question, so it is as  
22 long as the Parks Department takes to complete its final,  
23 you know, process. And I don't know what that is, so I'm at  
24 a little bit of a disadvantage.

25 MS. BAR: That was why I had suggested that maybe

1 we would handle this with a binding element, because we  
2 don't completely control the process, since we're not the  
3 only one executing the agreement. So we're a little  
4 concerned about having the requirement that it must be  
5 executed prior to it going to the Council, or any other  
6 specific time.

7 We thought it clearly, the rezoning, you know, the  
8 two things are tied together. We can't get the rezoning  
9 without the easement or the access. The access, you know,  
10 it doesn't mean anything without the rezoning.

11 So we thought that the better way to handle it was  
12 prior to being able to, you know, develop the site or apply  
13 for a preliminary plan, that the agreement would have to be  
14 executed.

15 MR. GROSSMAN: Mr. Knopf.

16 MR. KNOPF: Yes, well that is part of the reason  
17 why you had asked at the beginning why the binding elements,  
18 certain things of the binding elements, they coordinate and  
19 operate on the belt and suspender theory. We have the  
20 agreement that was the belt, and then we had the binding  
21 elements which said the same thing, which was the  
22 suspenders.

23 But now looking at the binding elements, we have a  
24 problem in that it merely refers to an easement agreement of  
25 the Maryland National Capital Park and Planning Commission.

1     And I would assume by that time it would have been signed  
2     so we know what we're talking about. But now there is no,  
3     we've got no agreement.

4                 MR. GROSSMAN: Okay, but let me turn back to  
5     Ms. Bar for a second. I understand you have a concern about  
6     whether or not, you don't control the timing with regard to  
7     the Planning Board and the staff and so you are concerned  
8     about that. But assuming that we could control that,  
9     assuming that we get them in line here to do it, is there  
10    any reason from EYA's standpoint that this agreement cannot  
11    be signed now?

12                MS. BAR: No.

13                MR. GROSSMAN: No, there is no reason it cannot be  
14    signed?

15                MS. BAR: There is no reason why it can't be  
16    signed.

17                MR. GROSSMAN: Okay. All right. So, and would  
18    that be preferable. Wouldn't that be preferable in advance  
19    of the zoning?

20                MS. BAR: I think that if it, the agreement with  
21    the coordinating committee is so important, we've all been  
22    acting, operating in good faith, working very closely  
23    together to get to this point. So it, you know, if that is  
24    an important point, I think that that is the better way to  
25    proceed, to give everyone comfort level on the issue.

1           MR. GROSSMAN: So now, who do you -- are you going  
2 to work with Mr. Mawr to set up a date for signing? Is that  
3 the idea?

4           THE WITNESS: Yes.

5           MS. BAR: Yes.

6           MR. GROSSMAN: All right. Because the record is  
7 going to be open for a bit after this anyway, why don't we  
8 have your signing take place while the record is open,  
9 submit it, and when I submit my report you have a, you'd  
10 have the final signed agreement, assuming everybody wants to  
11 sign.

12           MS. BAR: That is probably 60 days from now, I  
13 would think.

14           MR. GROSSMAN: You want 60 days?

15           MS. BAR: In terms of how much time we have. I  
16 just want to understand the -- the record will be open for  
17 maybe another week, and then your report, you'll have 45  
18 days --

19           MR. GROSSMAN: Right.

20           MS. BAR: -- for that. So you're saying that the  
21 agreement, executed agreement would -- the record, or the  
22 record would be reopened to --

23           MR. GROSSMAN: No, no, no, not reopened. I would  
24 propose to keep the record open for some period of time  
25 until you have the agreement signed.

1           MR. KNOPF:   Given the fact the Planning Board is  
2 going to go on a break in August --

3           MS. BAR:   Do you think you could do it in the next  
4 week or so?

5           MR. GROSSMAN:   Yes, that's a good point Mr. Knopf  
6 raises.

7           MS. BAR:   Well, one other possibility is, we could  
8 submit, and we can do this obviously very soon, our  
9 executed, the applicant's execution of it, and the Planning  
10 Board -- I just hate to leave the record open for an  
11 indeterminate amount of time. I thought you were suggesting  
12 that that would come in by the time you issued your report,  
13 and that would give us a little bit more time. That would  
14 be 60 days. We can do it right away. We can provide it to  
15 you. But I'm a little concerned about, they're not here,  
16 and I don't know how long it will take them to execute it.

17           MR. GROSSMAN:   Well, why don't we do this. Why  
18 don't we, why don't you submit your executed version of it,  
19 and then your executed, EYA executes it, and then we'll --  
20 and then send it over to the Planning Board and I'll ask  
21 staff if that can just be executed before they go off on  
22 their August break.

23           MS. BAR:   Well, we can ask them. I mean, I hope  
24 it can be done, but I really don't know.

25           MR. GROSSMAN:   Okay.

1           MS. BAR: So, and but what we could do, in other  
2 cases the record, if there is a specific piece that's going  
3 to be submitted to the record --

4           MR. GROSSMAN: Yes.

5           MS. BAR: -- we could leave it or anticipate that  
6 it is going to be opened for that, but not generally left  
7 open.

8           MR. GROSSMAN: Yes, I'm not necessarily saying  
9 that, be left open for everything that could be submitted.

10          MS. BAR: Okay. Well that would be --

11          MR. GROSSMAN: It could be left open for a certain  
12 period of time for some other submissions, and then  
13 specifically, after that point, only for that document.

14          MS. BAR: That's fine. I think that would be a  
15 good way to handle it. Is that all right?

16          MR. KNOPF: Yes, and I have a backup plan,  
17 perhaps.

18          MR. GROSSMAN: Yes?

19          MR. KNOPF: And that is, the binding elements  
20 could reflect with one of the binding elements, that there  
21 be in place, that the Exhibit 43A be executed, as a backup.  
22 I prefer what we're doing now to get it signed, but if  
23 that's going to delay things too much, because the finding  
24 elements now refer to an exhibit -- excuse me, refer to the  
25 agreement, but it doesn't identify the agreement. I'm a

1 little worried what agreement may emerge later. So I think  
2 we need to nail it down.

3 MS. BAR: Well, we offered in the beginning of  
4 this discussion that we would add a binding element that  
5 ways that the executed agreement, that the agreement, and we  
6 can attach it, will be executed. But we wanted to do it in  
7 that, you know, prior to, obviously, the project going  
8 forward for development or a preliminary plan. Are you  
9 suggesting that it say, what's the time frame for that?

10 MR. KNOPF: No, I'm just saying, if you can't --  
11 the ideal thing is to get this thing signed and before you,  
12 and then that's what's referenced. And we can reference it  
13 in the binding elements, referring to an agreement dated X  
14 date. And then we will know what agreement we refer to.

15 If that can't be done, then we can refer to an  
16 agreement, which is Exhibit 43A. It may not be executed  
17 yet, but we can say that that binding element is that that  
18 agreement is I place, or whatever the language.

19 MR. GROSSMAN: I mean, from my perspective, I  
20 would just as soon see this record closed as soon as  
21 possible. I happen to have an opportunity write it up now,  
22 and I could get it done before the Council even comes back.  
23 But I want to make sure that we have the things that are  
24 necessary in the record.

25 MS. BAR: I think we'll just, we can get it done.

1 THE WITNESS: Yes.

2 MR. GROSSMAN: All right.

3 MR. KNOPF: Mr. Hearing Examiner, I have an  
4 administrative problem. We have two witnesses that can't be  
5 here after lunch, of my four witnesses. I'm wondering if we  
6 can take them out of turn before --

7 MR. GROSSMAN: Any objection to that?

8 MS. BAR: No.

9 MR. GROSSMAN: All right. We're in the middle  
10 of --

11 MR. YOUNGENTOB: He's going to have to -- they've  
12 got to go now.

13 MS. BAR: Okay. That's fine. We'll finish --

14 MR. KNOPF: We've already interrupted him, so --

15 MS. BAR: Yes.

16 MR. GROSSMAN: I don't want Mr. Youngentob to wear  
17 out his pen before we -- he's standing there clicking it.

18 So how much longer do you have on Mr. Youngentob?

19 MS. BAR: I would say about 20 minutes? 20  
20 minutes. So why don't we go.

21 MR. GROSSMAN: All right. Well, I guess then  
22 let's take your other witnesses that have to leave.

23 THE WITNESS: No further questions for me?

24 MR. GROSSMAN: Not at this moment, apparently.  
25 Did you have any cross-examination?



1 MR. KNOPF: No.

2 MR. GROSSMAN: All right. Thank you. I guess I  
3 should ask, one second before you -- do you have any  
4 questions, I'm sorry, Mr. Dyer, do you have any questions of  
5 this witness?

6 MR. DYER: Of the -- how about Mr. Youngentob?

7 MR. GROSSMAN: Well, Mr. Youngentob is going to  
8 come back on the stand. He hasn't finished his testimony.

9 MR. DYER: Could he --

10 MR. GROSSMAN: We interrupted his testimony to  
11 clarify these issues, so that's --

12 MR. DYER: I just had a question regarding --  
13 because that slide is on the board.

14 MR. GROSSMAN: Right.

15 MR. DYER: If the witness could state which civic  
16 association public meetings the applicant had at public  
17 advertisement prior to the January agreement?

18 MR. GROSSMAN: Did you want Mr. Thakkar to state  
19 that?

20 MR. DYER: Yes.

21 MR. GROSSMAN: Mr. Thakkar?

22 THE WITNESS: What's the question?

23 MR. GROSSMAN: Which of the public meetings that  
24 are referenced upon that slide, Exhibit 41F, were where  
25 there was, in fact, a published agenda for the meeting?

1           THE WITNESS: So I believe each of the four public  
2   hearings listed under official approval process, January  
3   20th, January 16th, June 16th, and July 7th, all were posted  
4   on agendas in accord with those particular bodies, general  
5   standards prior to those meetings.

6           MR. DYER: My question actually was not in regard  
7   to those meetings but in regard to the public engagement  
8   process as to if he could state which specific civic  
9   associations in the area around the site did EYA have a  
10   publically announced meeting with prior to the January 20th  
11   approval?

12          MR. GROSSMAN: I don't think that he has testified  
13   as to that. He hasn't testified as to his, any outreach by  
14   him to the local organizations. I think that if you want to  
15   ask -- they may have testimony about some kind of outreach  
16   from Mr. Youngentob, but that's not what this witness  
17   addressed in his direct. He addressed the question of the  
18   approval process.

19          MR. DYER: But I just thought he had referred to  
20   the public testimony of --

21          MR. GROSSMAN: He referred to the meetings.

22          MR. DYER: -- under the process.

23          MR. GROSSMAN: But not to, you said, did he meet  
24   with community organizations, is that correct?

25          MR. DYER: Yes.

1 MR. GROSSMAN: That's a different question.  
2 That's not art of the process. That's sly in that Exhibit.

3 MR. DYER: Okay.

4 MR. GROSSMAN: But you can certainly as Mr. --  
5 and since that wasn't part of his direct --

6 MR. DYER: Right.

7 MR. GROSSMAN: So, but you can ask -- Mr.  
8 Thakkar's direct. You can ask Mr. Youngentob about that  
9 when he comes back, if he testifies about outreach. Okay.  
10 All right. Thank you, sir. All right. Mr. Knopf, do you  
11 wish to call a witness?

12 MR. KNOPF: Yes. Dan Dozier. Would you please  
13 state your name and address and --

14 MR. DOZIER: Do you want me to swear?

15 MR. GROSSMAN: I will in a second. Just state  
16 your name and address?

17 MR. DOZIER: My name is Dan Dozier, D-O-Z-I-E-R.  
18 I live at 5325 Yorktown Road in Bethesda in Green Acres,  
19 adjacent to the property.

20 MR. GROSSMAN: All right. Would you raise your  
21 right hand, please?

22 (Witness sworn.)

23 MR. GROSSMAN: Okay. You may proceed.

24 DIRECT EXAMINATION

25 BY MR. KNOPF:

1           Q     Do you have a statement today?

2           A     I have a statement. I'll give a copy. I'd like  
3 to read parts of it. I'm Dan Dozier, I'm co-president of  
4 the Little Falls Watershed Alliance. We are an all  
5 volunteer organization. We're here not on an hourly rate  
6 with no staff.

7                   I'm here to testify on behalf of LFWA, Little  
8 Falls Watershed Alliance, and the citizens who live in the  
9 over 20 plus neighborhoods in the watershed, that's the  
10 Little Falls Watershed, the Little Falls Creek, the Willet  
11 Creek and the Minihana Creek or branches as they are  
12 called.

13                   The Little Falls Watershed Alliance was started in  
14 2008 with the express purpose of advocating to protect the  
15 watershed and the fragile natural environment in lower  
16 Montgomery County, and in the D.C. portion of the watershed.

17           There are parts of the watershed in the District of  
18 Columbia, to ensure that the natural spaces persist for  
19 generations, and that the water quality is improved.

20                   We are composed strictly of local citizens. We  
21 strive to bring our neighbors together to build awareness,  
22 improve natural habitat, and protect our community's natural  
23 heritage, and enhance the community's enjoyment of the many  
24 creeks and forests in our watershed.

25                   As stewards of the watershed, we are committed to

1 restoring water quality, natural habitat, and ecological  
2 well being in the watershed. We speak for the needs of our  
3 parks and natural areas, and we advocate for clean water and  
4 laws that are fairly and enforced consistently and fairly.  
5 Okay.

6 The watershed in which we live, the Little Falls  
7 Watershed, is classified by the County Department of  
8 Environmental Protection, is one of the most impaired  
9 watersheds in the County.

10 It's located in a very urban developed area; most  
11 of that development having occurred 40 and 50 years ago.  
12 And some, most development occurred in this area well before  
13 our society as a whole, and the environmental regulators, in  
14 particular, understood the impact that urban development had  
15 on water quality, and has on water quality.

16 The County BEC has a description of our watershed.  
17 They describe it. And I'm not going to read the paragraph  
18 that's in my testimony, but they describe it as essentially  
19 piped and very degraded water quality. Okay.

20 MR. GROSSMAN: Piped?

21 THE WITNESS: Piped. Yes, much of the watershed  
22 and the creeks are piped, that is contained in artificial  
23 pipes that occurred when development occurred. And then in  
24 my neighborhood, Green Acres, open paved creeks that are  
25 paves.

1 MR. GROSSMAN: Okay.

2 THE WITNESS: Okay. And those have very adverse  
3 effects on the water quality, both in terms of stream flow,  
4 speed, in terms of heat, and in terms of picking up urban  
5 runoff.

6 BY MR. KNOPF:

7 Q When you mentioned paved, are you referring to  
8 concrete or pavement?

9 A I'm referring to concrete.

10 Q Yes.

11 A The creek that runs through our neighborhood is an  
12 inverted U, or a U that sits in the ground and is concrete.

13 MR. GROSSMAN: Okay.

14 THE WITNESS: Okay. The current industrial use on  
15 this property next to the street is, has been and is an  
16 environmental disaster. Okay. This use is totally  
17 inappropriate located where it is, located next to the  
18 creek. It's an example of the type of urban development  
19 that's had such an adverse impact on our watershed.

20 Nearly 100 percent of the property is impervious  
21 surface, concrete. Okay.

22 MR. GROSSMAN: So do you favor this rezoning?

23 THE WITNESS: Yes, sir. Absolutely. The reason,  
24 the paving on that creek leads to significant sediment  
25 contamination that flows right off. The rain falls on that

1 pad, and flows right into the creek, which is right next to  
2 it, carrying the sediment. And there's a great deal of  
3 sediment that gets located on that concrete pad because of  
4 the brick and block that's being shipped in and out. Plus,  
5 the contamination from the trucks that come in there, and  
6 that gets washed off, the grease and the oil that leak on  
7 the creek. Okay.

8 MR. GROSSMAN: Let me stop you for a second. I'm  
9 a little confused because I thought I understood Mr. Knopf  
10 and you that at least the umbrella organization was opposed  
11 to the easement and presumably then opposed to this  
12 development, because the easement occurred.

13 But from what I'm hearing from Mr. Dozier is, at  
14 least on behalf of his organization, that he strongly favors  
15 the rezoning. Now I'm a little --

16 MR. KNOPF: I maybe didn't make myself clear. We  
17 were opposed, both groups were opposed to use of park land  
18 for private use. Having that been decided, we then are  
19 focusing on the project itself. And I think I told you that  
20 the community felt this would be a positive project --

21 THE WITNESS: Yes.

22 MR. KNOPF: -- assuming we can resolve the one or  
23 two --

24 MR. GROSSMAN: But you couldn't have the, but you  
25 couldn't have the project without the easement.

1           MR. KNOPF: Correct. But that's been decided  
2 against us, so now we're focusing on --

3           MR. GROSSMAN: I still want to go back to that  
4 fundamental question. If you couldn't have the project  
5 without the easement --

6           MR. KNOPF: Right.

7           MR. GROSSMAN: -- and you want the project, then  
8 how could you be opposed to the easement?

9           MR. KNOPF: I think the important thing is, the  
10 very, very, a lot of discussion on this, and we dealt with  
11 the principal that private land should not be used for --  
12 public land should not be used for private purposes impaired  
13 the way so we could not endorse this. So we were prepared  
14 not to have the project. That being said, even though the  
15 project itself otherwise might be beneficial.

16           Since that issue is now gone and we lost, we're  
17 now just addressing the project itself.

18           THE WITNESS: And I'm just speaking on behalf of  
19 Little Falls Watershed Alliance.

20           MR. GROSSMAN: I understand.

21           THE WITNESS: Okay.

22           MR. GROSSMAN: I understand that you are part of  
23 an umbrella organization.

24           THE WITNESS: We are a separate organization.

25           MR. GROSSMAN: All right.



1           THE WITNESS: We agree with the neighbors there.  
2   There was a lot of controversy on the easement across the  
3   creek.

4           MR. GROSSMAN: Right.

5           THE WITNESS: However, from our perspective, this  
6   development is better for then environment than the current  
7   use. Period. Okay.

8           MR. GROSSMAN: Right. I just, it seemed to me  
9   there's a little bit of, the position is a little bit  
10   schizophrenic here, if you, if, in fact, you are saying that  
11   you have to have, you have to have the easement to have the  
12   project, and you want the project, but you don't want the  
13   easement. I don't know if you're not shooting yourself in  
14   the foot if you even opposed the easement. But I understand  
15   you are saying that's water under the bridge, no pun  
16   intended.

17          THE WITNESS: That's not an issue in front of us,  
18   is it? We'd like to point out that this creek is, this  
19   project and this property is located essentially right  
20   upstream from Mass Avenue, Massachusetts Avenue.

21          MR. GROSSMAN: Right.

22          THE WITNESS: The reaches of the creek below  
23   Massachusetts Avenue, by County designation, are the only  
24   reaches of the creek (a) that are not massively impacted by  
25   construction, by piping or paving -- not the only, but most

1 of the reaches above Mass Avenue have been impacted by  
2 construction; and (b) are the only reaches of the creek that  
3 the County says has any chance of improved water quality and  
4 aquatic habitat.

5 Removing that concrete pad and having the property  
6 subject to the new storm water regulations will improve  
7 water quality in the area, in the most important and most  
8 sensitive area of the creek to aquatic creatures. Okay.

9 MR. GROSSMAN: All right.

10 THE WITNESS: I also happen to live adjacent,  
11 across the street essentially, across Little Falls Parkway,  
12 in the neighborhood most directly impacted by this  
13 development.

14 MR. KNOPF: Could I ask the applicant to put up  
15 the neighborhood?

16 THE WITNESS: Yes, I could show you exactly where  
17 I live.

18 MR. KNOPF: Put it on the --

19 MR. GROSSMAN: On the board so everybody can see  
20 it. I hope you don't burn a hole in your hand.

21 THE WITNESS: I have to put my glasses on.

22 MR. GROSSMAN: I can understand that.

23 THE WITNESS: Okay. This, labeled residential, is  
24 the neighborhood in which I live. It's called Green Acres,  
25 and I live at the corner of Little Falls, Greenway Road and

1 Yorktown Road, which is right here.

2 MR. GROSSMAN: All right.

3 THE WITNESS: Within the yellow dotted area.

4 MR. GROSSMAN: Just a few hundred feet from the --

5 THE WITNESS: I haven't measured it.

6 MR. GROSSMAN: Well that's based on what they  
7 said.

8 MR. LANDFAIR: It's probably about 400 feet.

9 THE WITNESS: And I have spoken to many of the  
10 neighbors who live on the street closest to the Little Falls  
11 Parkway, Allendale Road. The development there will do two  
12 things. And there is mixed opinion. You know, there are  
13 some people who favor it, some people who oppose it, some  
14 people who don't care, as you would expect.

15 MR. GROSSMAN: Right.

16 THE WITNESS: However, pretty much everybody would  
17 be very pleased to find the truck noise that comes into that  
18 property -- those trucks come in and start loading and  
19 unloading bricks and blocks at about 3:00-4:00 in the  
20 morning. And everybody would be very pleased for that truck  
21 noise to go away, and for better buffering between our  
22 neighborhood and the new property, the new use.

23 This property, as you know, as the map shows, it's  
24 also adjacent to the Capital Crescent Trail, and upstream  
25 from the major part that's the Little Falls Stream Valley

1 Park, which is essentially below Massachusetts Avenue, down  
2 almost to the river, to the Potomac River.

3 And all of those recreational and park lands mean  
4 that this property has the potential, with changed land use,  
5 to improve storm water management for the other  
6 environmental upgrades to be paid by the applicant to  
7 improve the urban environment, to improve water quality  
8 downstream into the park, into the Little Falls Valley,  
9 Little Falls Stream Valley Park, and the reaches of the  
10 stream still capable of supporting aquatic life.

11 The improved storm water management in particular  
12 from the new development, and they're going to have to do  
13 that, by County regulation, which by the way, in our  
14 opinion, is the best regulation in the country for storm  
15 water management, brand new.

16 MR. GROSSMAN: Well, it's a State regulation.

17 THE WITNESS: Well, the State, and then the County  
18 had to adopt its own permit.

19 MR. GROSSMAN: Right.

20 THE WITNESS: And it's the County reg that is, in  
21 particular --

22 MR. GROSSMAN: Okay.

23 THE WITNESS: Okay. The storm water management  
24 from this new development will increase, I believe, citizen  
25 enjoyment and use of the park, because it will slow stream

1 flow into the park, reducing stream bank erosion. And if  
2 you know that area, that stream, because of the volume and  
3 flow, the speed of the water, has major erosion along the  
4 banks. And trees get knocked into the creek and knocked  
5 over because of the erosion from the creeks.

6 This would be a win-win for both the citizens and  
7 the environment. So these are the reasons we support  
8 changing the current use of the Vetco property from  
9 industrial to residential. We strongly support upgrading  
10 this land use to residential, and require the new  
11 development to meet the County's storm water regs.

12 These changes would be very positive, and  
13 definitely improve the environment in our stressed and  
14 degraded watershed.

15 We support the following binding elements in  
16 particular, which we understand the applicant has agreed.  
17 One, removal of the current pad, the concrete, the paving,  
18 and the debris and material from that industrial site; and  
19 on the encroached land, that pad encroaches onto park land,  
20 on the County park land, and replant the encroached area  
21 with trees and shrubs to buffer the site from both Little  
22 Falls Parkway --

23 MR. GROSSMAN: The encroached area?

24 THE WITNESS: Yes, there is, there is a pad that  
25 sits too close. It sits on property that is owned by

1 Maryland National Capital Park and Planning Commission. And  
2 that property should be buffered. There should be buffering  
3 along. And as I understand it, they have agreed to plant  
4 screening that will screen the site both from the parkway  
5 and from my neighborhood. And that will be done at the  
6 applicant's cost.

7 MR. GROSSMAN: I just, which binding element are  
8 we talking about?

9 MS. BAR: This is what happens when you don't go  
10 in order. We also are going to be introducing the revised  
11 binding elements, and I mentioned there are 12 of them.

12 MR. GROSSMAN: I see.

13 MS. BAR: And this is number 10.

14 MR. GROSSMAN: I see.

15 THE WITNESS: Okay.

16 MS. BAR: So --

17 MR. GROSSMAN: Number 10 handles all of  
18 Mr. Dozier's points?

19 MS. BAR: Yes.

20 THE WITNESS: It does.

21 MR. GROSSMAN: Okay.

22 THE WITNESS: Okay.

23 MR. GROSSMAN: And you've seen number 10,  
24 Mr. Dozier, and you are satisfied.

25 THE WITNESS: Yes.

1 MR. GROSSMAN: Okay.

2 THE WITNESS: Okay. Not a binding element, as I  
3 understand it, but as part of a consideration paid by the  
4 applicant to the Park and Planning Commission for the use of  
5 the easement, there was an agreement for a payment of  
6 \$500,000 to Park and Planning Commission.

7 We understand that Park and Planning will spend  
8 that money on projects to enhance the watershed, and the  
9 community surrounding. And that will include such things as  
10 stream restoration, non-native species management, trail  
11 renovation, and maintenance, and the like. We understand  
12 that that was part of the easement agreement.

13 MR. GROSSMAN: I know the \$500,000 is part of it.

14 THE WITNESS: Well, that's what I'm talking about.

15 MR. GROSSMAN: I just don't know whether Park and  
16 Planning has made a commitment under the agreement to do  
17 that.

18 THE WITNESS: It's part of the easement.

19 MS. BAR: Yes.

20 MR. KNOPF: It's spelled out in the agreement.

21 THE WITNESS: It's part of the agreement.

22 MR. KNOPF: And also for the clarification, this  
23 is incorporated by binding element number 11.

24 MS. BAR: Yes, that's 11. Belts and suspenders.

25 MR. GROSSMAN: All right.

1           THE WITNESS: So given that they have agreed to  
2 spend Park and Planning \$500,000 as consideration for the  
3 easement, we understand that the way that money, which will  
4 be in Park and Planning's hands, and not the applicant's,  
5 once the project is executed, that Park and Planning will  
6 control that money. And therefore we understand that the  
7 applicant, this is not a binding element for the applicant.

8           However, and it may not be something that you can  
9 do directly in any order. However, we want to be right out  
10 front everywhere we can, including with you, that the Park  
11 and Planning formally agreed to consult with the community  
12 on the spending of that money. This is an important thing  
13 to our neighborhood, and --

14           MR. GROSSMAN: You understand that --

15           THE WITNESS: Well, okay.

16           MR. GROSSMAN: -- I can't commit Park and Planning  
17 and --

18           THE WITNESS: I understand. You can't permit Park  
19 and Planning to anything. I understand that. However, you  
20 can include in the record the views that we express here.

21           MR. GROSSMAN: Absolutely.

22           THE WITNESS: And we ask that you do that.

23           MR. GROSSMAN: It's now in the record --

24           THE WITNESS: Okay. Thank you.

25           MR. GROSSMAN: -- by your testimony. But I'm just



1 looking at the draft easement agreement and the provision  
2 about the \$500,000, page two of the draft agreement, which  
3 is Exhibit 43A. Grantee shall contribute \$500,000 as  
4 consideration for the easement which sum is to be used to  
5 implement the amenity projects referenced above, or will  
6 constitute the financial contribution mentioned above,  
7 according to the following schedule. And then it gives the  
8 schedule. I'm not sure exactly what that means in terms of  
9 binding Park and Planning. So I just want you to be aware  
10 of it.

11 THE WITNESS: I --

12 MR. GROSSMAN: And the binding elements that --

13 THE WITNESS: I understand full well that it's not  
14 a binding element and that Park and Planning is not being  
15 bound in the way it spends this money in any way. Okay.

16 MR. GROSSMAN: All right. Let me just finish the  
17 sentence. And that is that even if it's a binding element,  
18 we can't bind -- the binding element from the applicant  
19 cannot bind Park and Planning.

20 THE WITNESS: I understand.

21 MR. GROSSMAN: Okay. I just wanted the community  
22 to understand that.

23 THE WITNESS: I'm not at all suggesting otherwise.

24 MR. GROSSMAN: Okay.

25 THE WITNESS: I am suggesting that the community

1 will be paying close attention to Park and Planning, that  
2 it's important that Park and Planning listen to the  
3 community.

4 And our experience has been the government doesn't  
5 do a very good job of listening to the community often. And  
6 so we want to be very clear and up front right away with  
7 this concern. And again, it isn't anything to do with the  
8 applicant, you know. Our experience has been the applicant  
9 has been much easier to deal with than the government.

10 MR. GROSSMAN: All right.

11 MS. BAR: Wow. I think that's a compliment.

12 THE WITNESS: It is. Not much, but it's a low  
13 bar.

14 MS. BAR: Exactly.

15 MR. GROSSMAN: Mr. Dozier, did you have, did you  
16 say you wanted to submit something in writing?

17 THE WITNESS: I do. I do.

18 MR. GROSSMAN: Okay. We'll call this Exhibit 46.  
19 Thank you, sir.

20 (Exhibit No. 46 was  
21 marked for identification.)

22 THE WITNESS: Thank you, sir.

23 MR. GROSSMAN: You gave me two copies. All right.  
24 And Exhibit 46 is Dan Dozier's testimony on behalf of the  
25 Little Falls Watershed Alliance.

1 MR. KNOPF: Are you finished with your statement?

2 THE WITNESS: I'm finished with my statement.

3 MR. GROSSMAN: All right.

4 THE WITNESS: And I'm ready to answer any  
5 questions.

6 MR. GROSSMAN: Ms. Bar, do you have any cross-  
7 examination?

8 MS. BAR: No. Thank you.

9 MR. GROSSMAN: Mr. Knopf? Mr. Dyer, do you have  
10 any questions of this witness?

11 CROSS-EXAMINATION

12 BY MR. DYER:

13 Q I had a question in regard to the, what is the  
14 current frequency of the truck travel, and how many trucks  
15 currently enter the site in a week?

16 A In a week, I don't know specifically. I have been  
17 told, but I have no independent knowledge that there are  
18 upwards of 100 a day. But I have no direct knowledge of  
19 that. That's what people have told me. It is clear from  
20 our experience that there area lot of trucks that go out  
21 every day, not just --

22 Q But specifically to the Vetco plant?

23 A Yes, because the Vetco plan used to be a  
24 manufacturing facility. When I first moved there, you could  
25 hear the plant operating every night. It was a pain,

1 especially for the people who lived on Allendale.

2           They stopped using it as a manufacturing facility  
3 some years ago, and now they just transship. They bring  
4 brick and block in, and they take it out. And they store it  
5 on the property, and it causes lots of dust as I've  
6 commented. And so there are a lot of trucks that go in and  
7 out.

8           MR. GROSSMAN: All right. Thank you, Mr. Dozier.  
9 I appreciate very much --

10          THE WITNESS: Thank you.

11          MR. GROSSMAN: -- your coming down here and  
12 sharing your views and those of Little Falls Watershed  
13 Alliance. All right. Did you have a second witness who had  
14 to leave before --

15          MR. KNOPF: Yes.

16          MS. McDONALD: I want to apologize for disrupting  
17 the order of this hearing, sir.

18          MR. GROSSMAN: You don't have to apologize.

19          MS. McDONALD: I have a dental appointment, and I  
20 really have to get to it, and I am very grateful to you  
21 for --

22          MR. GROSSMAN: We appreciate that. We know that  
23 it takes -- everybody has busy schedules, and to take the  
24 time as a citizen to come down here to improve the public  
25 interest is greatly appreciated.

1 MS. McDONALD: This is the copy we made for EYA.

2 MR. HARRIS: Thank you.

3 MR. KNOPF: Did you make one for me?

4 MS. McDONALD: You'll get one. My name is Ann  
5 McDonald, and I live at 5106 Saratoga Avenue in Bethesda in  
6 the community of Glen Cove off River Road.

7 MR. GROSSMAN: All right. Would you raise your  
8 right hand, please?

9 (Witness sworn.)

10 MR. GROSSMAN: All right. You may proceed.

11 DIRECT EXAMINATION

12 BY MR. KNOPF:

13 Q Ms. McDonald, do you have a position within a  
14 civic organization?

15 A I was about to --

16 Q Sorry.

17 A Yes. I'm testifying today as the vice-chair of  
18 the Citizens Coordinating Committee on Friendship Heights,  
19 the CCCFH.

20 Q Thank you.

21 A We represent 16 citizens associations with  
22 approximately 4500 households and members. Our member  
23 communities are located in quite a big area, all along River  
24 Road from about Western Avenue west out to Kenwood and  
25 Springfield, and on the north/south access from

1 Massachusetts Avenue to Wisconsin Avenue. That area  
2 includes Westbard where the EYA proposed to build a new  
3 townhouse development.

4 We're actually very pleased that EYA has agreed to  
5 our list of binding elements that we recommended. But one  
6 issue remains, and that is the need for more parking in the  
7 townhouse development.

8 The schematic drawing that we have shows that the  
9 streets will be too narrow for any on street parking. The  
10 25 market priced townhouses, we understand, will each have a  
11 two-car garage from the driveway which could accommodate  
12 parking for two cars, and the five moderately priced  
13 dwelling units will have a one-car garage and a one car  
14 capable driveway.

15 We also understand that under the homeowners  
16 association rules which will apply, all owners will have to  
17 park their cars in their garages, and that would leave the  
18 driveways available for parking, and eight extra parking  
19 spaces, which we believe will be on the north end of the  
20 development. Again, no on-street parking. It's just not  
21 possible.

22 Q And the eight parking spaces, you say that was  
23 what the developers schematic --

24 A That's what we understand the developers are  
25 planning. It's on the schematic. And one of those is a

1   handicapped space and the rest are regulars.

2               We're concerned about the parking situation for  
3   various reasons. First of all, we suspect MPDU families,  
4   above all, will probably have two cars, at least two cars  
5   for two employed adults going to their separate jobs. If  
6   they have high school or college age kids, they may have to  
7   have a third car to drive to school and drive to jobs. So  
8   the development's eight extra spaces are very likely that  
9   they can be taken up by the extra cars of the MPDU units.

10              And then there are the matters that are simply  
11   every day living. And I'm just sort of sitting around  
12   trying to figure out what it would be like living in a  
13   development like that. And we figure there could be some  
14   problems and some community tensions.

15              For example, if just five out of the 25 market  
16   rate homes invited four guests for dinner in the same  
17   evening, not an unreasonable thing to do, their driveways  
18   could accommodate 10 of those. of the 20 visitor cars. But  
19   even then if all the extra, eight extra parking spaces are  
20   open, you'd still need another two. Where are they going to  
21   go?

22              Another real world example. Sunday afternoon,  
23   nice Sunday, three families out of 30 homes invite 10 guests  
24   each to a birthday, a barbeque, or to watch a ball game on  
25   TV. If the parking situation pertains, two of those

1 visitors each could park in one of those three driveways.  
2 That's six. Then they take up, if the eight spaces are  
3 open, doubtful, but if they are, that takes care of 14. Now  
4 you need 16 more parking spaces.

5 And this is an ordinary, very modest, social  
6 occasion for a Sunday. Even if the neighbors generously let  
7 the use of their driveways to the overflow, it probably  
8 still wouldn't be enough.

9 I'd just like to raise the question on parking,  
10 also, because EYA does have other townhouse developments,  
11 and we talked earlier about the 150-unit Potomac Park Place,  
12 the three P's out there on 270 at Montrose.

13 We have a real estate agent who is a member, long  
14 time member of the coordinating committee. She has contacts  
15 all over the area. And one of her clients lives out there.

16 And she asked him, what's the parking like. And he said --

17 MR. GROSSMAN: I'll stop you there for a second.

18 THE WITNESS: Yes, sir.

19 MR. GROSSMAN: I mean, that's a form of hearsay  
20 that's particularly unreliable. It's somebody who told  
21 somebody else who is not in here to be cross examined. So  
22 I'm very leery about letting that kind of evidence in,  
23 somebody else told somebody else outside the hearing, being  
24 introduced to prove the truth of what's asserted there,  
25 which is the definition of hearsay. And so I will stop you



1 on that.

2 BY MR. KNOPF:

3 Q Let me ask, are you going to state the number of  
4 parking spaces, or history of parking spaces at this  
5 development?

6 A Well, not exactly.

7 Q You can't give me the answer. Okay. I was just  
8 curious as to what the nature of the testimony was.

9 A All right. If you say so.

10 MR. GROSSMAN: And just as a general -- I  
11 understand perfectly well what you are saying about the  
12 problem with the parking. I'm not sure that that's not more  
13 of a site plan issue. And it certainly has aspects of  
14 compatibility to the public interest to it. But it is a  
15 little bit more of a site plan issue.

16 There's a maximum of 30 units proposed in this  
17 development. It doesn't mean that at site plan they have to  
18 prove 30. They might say they can only fit 29 on here. And  
19 part of that space that's saved would go to parking. I'm  
20 not sure. It's also, it's not entirely clear what my  
21 options would be here because the statute provides a  
22 standard as to parking. It says two parking spaces per  
23 unit.

24 And even without the discount that the applicant  
25 has suggested here for having MPDU's, which I'm not sure

1   that particular discount applies here, but even assuming it  
2   did not apply, they would be required to have 60 parking  
3   spaces under the statutory requirement.  So I have a  
4   question as to what more I could require or suggest should  
5   be required for parking?

6               THE WITNESS:  I think we're aware that the  
7   decision would be made at site plan, but we wanted to  
8   suggest, at least make an initial suggestion here and get it  
9   into the record that, you know, an alternative number of  
10  parking spaces.

11              MR. GROSSMAN:  I think it's a fair point, and I  
12  can certainly concede that there is an issue here as to  
13  whether or not the number of parking spaces provided is  
14  going to be sufficient to avoid overflow parking.

15              THE WITNESS:  Well, there are some other  
16  circumstances here that make it particularly troubling, and  
17  that is, of course, its location right next to park land.  
18  If I could just run through quickly?

19              MR. GROSSMAN:  Sure.

20              THE WITNESS:  Of course, if the drivers get  
21  frustrated and can't find places to park, they're going to  
22  park wherever they can and wherever it's easiest.  And what  
23  we're looking at, the next obvious choice, is the grassy  
24  park land that runs between the development and Little Falls  
25  Parkway on the other side, that's just about, somewhere

1    between, I am guessing about anywhere from 10 to 20 feet  
2    wide at various points.

3               And we think the chances are they would probably  
4    park there if they got frustrated, even though it is  
5    illegal, and even if EYA installs no parking signs along  
6    Little Falls Parkway, as they have promised, the Park  
7    Police, quite frankly, cannot patrol there regularly, so  
8    there is no way to ensure that people won't park and walk  
9    across the park land to get to the townhouse development.

10              We're worried about environmental damage that  
11    could be done to the park land if that happens and if it  
12    becomes a regular practice as it might be. And figure that  
13    the County probably could no afford to fix that damage.

14              We're also worried about visitors walking along  
15    that strip of park land or trying to walk along the road  
16    itself. Little Falls Parkway is very narrow. It's just one  
17    lane each way at that point, with a blind curve. And it has  
18    a little, what looks like a bike path. The only thing that  
19    separates it from the road itself is a white painted line.  
20    and its only two-feet wide. So you can imagine people  
21    walking up there at night. There is no lighting.

22              MR. GROSSMAN: I'm very familiar with Little Falls  
23    Park.

24              THE WITNESS: You know Little Falls. Okay. Good.  
25    We're just, we would really not like to see somebody hit,



1 Just very quickly, if you care to look at the photographs,  
2 though I gather you know this road just about as well as I  
3 do. The Little Falls Parkway photographs are F, G, H and  
4 I. And you can see from two directions, the side the  
5 townhouse development would be on.

6 MR. GROSSMAN: Let me stop you for a second so we  
7 can mark these as an exhibit and identify what you are  
8 saying in the record. So we'll call Exhibit 47 in this  
9 series of photographs. And let's just start out with A and  
10 go right through it.

11 (Exhibit No. 47 was  
12 marked for identification.)

13 THE WITNESS: Okay. Well, unfortunately, sir,  
14 Moto Photo was not able to put them in the order that I  
15 wanted, so I'm going to have to dodge around a little bit  
16 here.

17 MR. GROSSMAN: Okay, so what --

18 THE WITNESS: The pictures of Little Falls Parkway  
19 that pertain are FGH and I.

20 MR. GROSSMAN: I understand. I just want to  
21 identify all the photographs.

22 THE WITNESS: All right.

23 MR. GROSSMAN: Who took -- did you take these  
24 photographs?

25 THE WITNESS: I took some. My colleague, Pete

1 Salinger, took some.

2 MR. GROSSMAN: All right. And were you present  
3 when they were taken?

4 THE WITNESS: Was I?

5 MR. GROSSMAN: Yes.

6 THE WITNESS: I took some of them.

7 MR. GROSSMAN: I know, the ones you were not --

8 THE WITNESS: So I was there.

9 MR. GROSSMAN: -- the ones you were not present --

10 THE WITNESS: I was not there when Pete took them,  
11 but this is definitely the area.

12 MR. KNOPF: Mr. Salinger will be the next witness  
13 when we get another witness, if you want to have him  
14 testify --

15 MR. GROSSMAN: All right.

16 MR. KNOPF: -- now or later.

17 MR. GROSSMAN: Well, let's identify the pictures.  
18 What is 47A?

19 THE WITNESS: Going very quickly through our  
20 labels, A is the morning traffic on River Road looking east  
21 toward Western, the D.C. line, Western Avenue. It is  
22 approaching the intersection of River Road and Butler Road  
23 and then followed by Little Falls Parkway.

24 B is the end of Butler Road. It is that little  
25 easement that Vetco now has which the townhouse development

1   apparently would also have and which their commercial  
2   traffic would come through.  And that would be, we  
3   understand that that is the northern entrance to the  
4   townhouse development.

5               C is the business parking spaces along Butler  
6   Road.  They're all posted, reserved for those businesses,  
7   and for towing.  So anybody who parks there runs a certain  
8   risk.  There are big lots --

9               BY MR. KNOPF:

10            Q     May I just ask on that, where is Butler Road on  
11   this exhibit?

12            A     Butler Road is the darkish concrete strip going  
13   down the middle of it, with there are cars parked on either  
14   side, left and right.  That is Butler.  And it goes right  
15   into the easement.  There is no clear delineation between  
16   the road itself and the easement.

17               MR. GROSSMAN:  Is Ernie's Automotive still down  
18   there?

19               THE WITNESS:  Euro Motors is there, and Marten's  
20   VW is there.

21               MR. GROSSMAN:  Ernie's Automotive?

22               THE WITNESS:  Ernie's is not, sir.  I don't --

23               MR. GROSSMAN:  All right.

24               THE WITNESS:  They have gone somewhere else.

25               MR. GROSSMAN:  So D is?

1           THE WITNESS: D is a parking lot that's behind the  
2 Butler Road office building. It's an office building and a  
3 gym. My observation, having visited several times, that  
4 it's always either 75 to 100 percent full.

5           E is Butler Road again in the upper portion of it.  
6 This is immediately to illustrate while on the left hand  
7 side you can see a lot of business parking at the vet. That  
8 is double parking. If you try to park there, someone will  
9 come in behind you and trap you.

10           On the right hand side we have curb parking for  
11 about 12 to 15 cars. But that is always taken up. I think  
12 the automobile dealerships use them. The body shop uses it.  
13 I have never seen an empty space along that curb area on  
14 Butler Road. Even if somebody parked there and had to walk  
15 down to the townhouse development, it's about 100 yards.

16           And I think, all right, let me see. That's  
17 Butler. And then we get onto the Little Falls Parkway.

18           BY MR. KNOPF:

19           Q     That would 47F, correct?

20           MR. GROSSMAN: 47F.

21           THE WITNESS: Yes.

22           MR. GROSSMAN: Little Falls Parkway.

23           THE WITNESS: Little Falls Parkway looking north  
24 toward River Road. You can see that curve that the drivers  
25 have to come around, and there right there is the grass land



1     that people might, that we're afraid people might park on.

2                   G is a picture of the zoning request sign, because

3     I just wanted to prove I was in the right place, and it's --

4                   MR. GROSSMAN:   You didn't take it down?

5                   THE WITNESS:   No, I did not take it down, sir.  I

6     photographed it the way it is.

7                   MR. GROSSMAN:   How long has it been down, as far

8     as you know?

9                   THE WITNESS:   I thought I was photographing it

10    approximately where their access easement would go, but

11    since we're still working, apparently fluidly between

12    alternatives A, B and C, I can't say that for sure.  They're

13    all along the sign.

14                   BY MR. KNOPF:

15           Q     It's C.

16           A     Sir?

17           Q     Tell him it's C.  It's only C.

18           A     Only C?  I beg your pardon.  All right.  I think

19    it's in C, but I'm not absolutely sure, to tell you the

20    truth.  Okay.

21                   H is Little Falls Parking looking --

22                   MR. GROSSMAN:   Well, let's come back to G for a

23    second.  So this is the sign, notice sign located --

24                   THE WITNESS:   On the grass --

25                   MR. GROSSMAN:   -- on the grass --

1           THE WITNESS:  -- where I think alternative C was  
2 supposed to come out.

3           MR. GROSSMAN:  Ms. Bar, do we know how long that  
4 sign has been down?

5           MS. BAR:  I do not know the answer to that  
6 question, but we will definitely be out there this afternoon  
7 to make sure if it is --

8           THE WITNESS:  You might want to put it back up.

9           MR. YOUNGENTOB:  I put it up yesterday.

10          MS. BAR:  Okay.  It's already back up then.

11          MR. GROSSMAN:  Do we know how long it's been down?  
12 It's a notice issue.

13          MS. BAR:  I understand.  I have been by there in  
14 the last -- when did you take these pictures?

15          THE WITNESS:  It must have been Friday night.

16          MS. BAR:  Because I was down, I drove last week  
17 and it was up.

18          MR. GROSSMAN:  Okay.

19          MS. BAR:  So I think it's been very --

20          THE WITNESS:  I didn't touch it, really.

21          MR. GROSSMAN:  I was just teasing.

22          THE WITNESS:  Okay.

23          MR. GROSSMAN:  Okay.  So --

24          THE WITNESS:  So H is the Little Falls Parkway  
25 looking south towards Massachusetts Avenue.  That's

1 obviously more area that we're concerned, there on the right  
2 hand side, could become a parking lot.

3 And I is the Little Falls Parkway, also looking  
4 south. It's about 100 yards further down and toward Mass  
5 Avenue. They have a little sort of gravel cutout there, and  
6 that's my car sitting there. But it is about 100 yards back  
7 up. And so I'm not at all sure that people would wind up  
8 parking there.

9 MR. GROSSMAN: So I, 47I is south of the area  
10 where the proposed --

11 THE WITNESS: That is correct.

12 MR. GROSSMAN: And 47 --

13 THE WITNESS: Just before the intersection of Mass  
14 Avenue.

15 MR. GROSSMAN: And 47H, is that about where the  
16 same --

17 THE WITNESS: That's above it. You can just  
18 barely see down there the cutout with my car in it. It's  
19 about 100 yards above where I think their driveway is.

20 MR. GROSSMAN: Okay.

21 THE WITNESS: But that was all guesswork.

22 MR. GROSSMAN: J.

23 THE WITNESS: And then J is going to appear in  
24 Pete's testimony, and this is River Road, that same traffic  
25 looking westbound. This is traffic that is actually stacked

1 up from the Little Falls Parkway intersection. It goes  
2 about, I don't know, at least a mile. You know it. Okay.  
3 I can tell by the way you -- I don't have to explain it to  
4 you.

5 MR. GROSSMAN: So from these photos, 47A to J, do  
6 they accurately represent the scene as specified, or the  
7 scenes as specified from the captions?

8 THE WITNESS: I certainly hope so, sir. I labeled  
9 them.

10 MR. GROSSMAN: Okay. So that is a yes. I'm just  
11 trying to -- The way we authenticate documents for the  
12 record. That's all. That's the reason.

13 THE WITNESS: All right. Yes, sir. To the best  
14 of my knowledge, yes.

15 MR. GROSSMAN: Okay. Well, you have the  
16 knowledge. That's the point. I'm asking you because you  
17 either took the pictures or are knowledgeable about the  
18 pictures.

19 THE WITNESS: Well, the reason I took the pictures  
20 of Butler Road is because we understand that EYA is thinking  
21 about using that as an alternative for some of their  
22 overflow parking. We don't think that is very viable, as  
23 you can see from these photographs, the curb parking, as we  
24 stated, is filled 24/7. The few spaces that are in front of  
25 the office buildings are reserved and marked for towing.

1           Even if there were spaces available on Butler, we don't  
2   think the townhouse owners would want their visitors to park  
3   and walk 100 yards down a steep slippery industrial street  
4   to get to the townhouse development. In fact, it would be a  
5   little strange to ask your guests to do that when EYA  
6   insisted on having direct access to Little Falls, because  
7   Butler is not aesthetically compatible with their townhouse  
8   development.

9           We've heard that EYA also talked about possibly  
10   negotiating with owners on Butler to have, to use their  
11   property for overflow parking. Frankly, those agreements  
12   could be gone tomorrow, you know. The properties could be  
13   sold out from under the current owners, and whatever  
14   agreement they had will no longer exist.

15           So Butler, we don't think, is a relief valve for  
16   the overflow parking, and we don't think it's a permanent  
17   long term solution that the townhouse community needs.

18           MR. GROSSMAN: Do you have a suggestion as to a  
19   permanent long term solution?

20           THE WITNESS: Well, as you said, site plan is  
21   going to get into this. We understand that the Planning  
22   Board has said they're going to look at it at site plan. We  
23   just wanted to bring this issue up because we feel very  
24   strongly that we need to bring it up now and that it not  
25   sort of get lost in the shuffle.

1           We would suggest, and this is just sort of an out  
2 of the air number, a total number of extra parking spaces  
3 instead of eight be 15, with one of them handicapped. I  
4 don't know how that fits the standard. But the Planning  
5 Board can consider whether this is a sufficient number and  
6 whether more spaces should be provided, and if so, where  
7 they should be located on the property. We're not going to  
8 make that kind of proposal. But that's what we would  
9 recommend.

10           MR. GROSSMAN: All right. And given all of the  
11 concerns that you have about the parking, do you recommend  
12 the rezoning that's being sought here?

13           THE WITNESS: Well, if it were zoned RT-10 they  
14 probably wouldn't have this problem, but we understand the  
15 reasons for the RT-15, and I think that's been pretty well  
16 hashed over by the parks people and the Planning Board. And  
17 so I think we go with that. We go with the rezoning.

18           Adjustments will have to be made, I'm sure. I  
19 don't know what they are and no professional in this field.  
20 But we just wanted to raise the issue.

21           MR. GROSSMAN: No, I understand. I mean, what I'm  
22 trying to get is ultimately there's a bottom line. Either  
23 the zoning is approved by the counsel or not. And so I was  
24 trying to get from your organization, the position of your  
25 organization, is your organization in favor of the rezoning?

1 THE WITNESS: With the binding elements, yes, sir.

2 MR. GROSSMAN: Okay. Thank you.

3 MR. KNOPF: As we stated at the beginning, the  
4 organization's position is, with parking, more parking, it  
5 is a positive. But that we do not believe you can find this  
6 as compatible, and it will not cause adverse impacts on  
7 adjacent property unless there is more parking.

8 MR. GROSSMAN: Well, and now you said something  
9 that's inconsistent with what your witness just said.  
10 And --

11 MR. KNOPF: I prefer to phrase it, the witness  
12 said something inconsistent with what I said which was the  
13 official position of the organization that voted. The  
14 organization voted that they would not oppose. They find  
15 this a positive project, providing the parking can be  
16 rezoned.

17 MR. GROSSMAN: Well, who speaks on behalf of the  
18 organization, the witness or you?

19 THE WITNESS: I do right now.

20 BY MR. KNOPF:

21 Q Is it your position --

22 A I am the elected officer.

23 Q Is your position that if the parking is not  
24 resolved, you would still -- because we don't see an  
25 inconsistency because we think the parking can be resolved

1 on site, that they could have 15 spaces. It's not a  
2 problem.

3 MR. GROSSMAN: All right. So we'll ask you  
4 afterwards how you can do that. I'm going to make certain  
5 that I have that, based upon obviously the very beginning,  
6 and I'm going to ask the applicant how they will address the  
7 parking concerns. But ultimately, the Council has to make a  
8 decision, do they grant rezoning or not. And if they leave  
9 the parking issues for site plan, as they may well do, there  
10 is still the question, does this organization still favor  
11 the rezoning. I hear from the witness, yes.

12 THE WITNESS: I think so.

13 MR. KNOPF: That's your position.

14 MR. GROSSMAN: All right. Cross-examination?

15 MS. BAR: No. That was exactly what I wanted to  
16 hear, and it's clear to me now. Thank you.

17 MR. GROSSMAN: Mr. Knopf, I take it you are not  
18 going to cross-examine?

19 MR. KNOPF: No. I'll beat her up later.

20 THE WITNESS: He'll get to me later.

21 MR. GROSSMAN: One second, ma'am. Mr. Dyer, do  
22 you have any questions of this witness?

23 CROSS-EXAMINATION

24 BY MR. DYER:

25 Q I would just ask as a fellow community member,



1 would you prefer that they use Butler Road as opposed to  
2 paving into Little Falls Park for this development?

3 A I don't have an answer on behalf of my community.

4 I can answer personally, yes, I would like them to use  
5 Butler. I don't see why they can't. But that's -- I  
6 understand the reasons having to do with economics and the  
7 appearance, and I'm not going to argue with that. Again, I  
8 am not a professional.

9 MR. GROSSMAN: Okay. Thank you, Mr. Dyer. And  
10 thank you very much, ma'am. I appreciate you taking your  
11 valuable time to share your views.

12 THE WITNESS: And thank you very much for changing  
13 the schedule, sir. I appreciate it. And now onto the  
14 dentist.

15 MR. KNOPF: From pain to pain.

16 THE WITNESS: I know. It's much more fun here.

17 MR. KNOPF: Thank you, Ann.

18 MR. GROSSMAN: All right. Shall we turn back and  
19 continue with your first witness?

20 MS. BAR: We can do that or break for lunch.  
21 What's your preference?

22 MR. GROSSMAN: Let's finish with the poor man.  
23 I'm sorry.

24 MS. BAR: I have to regroup, because I thought we  
25 were breaking for lunch.

1           MR. GROSSMAN: Well, we will, but you said about  
2 20 minutes, so I guess we could squeeze the rest of his  
3 testimony in, Mr. Youngentob.

4           STATEMENT OF ROBERT YOUNGENTOB (Resumed)

5           THE WITNESS: Thank you. And again, I apologizes  
6 for the confusion that caused the recess with regard to the  
7 process of the easement. But I think maybe that's why this  
8 sector plan was approved in 1982, and it's taken somebody 30  
9 years to figure out that process to move forward.

10          MR. GROSSMAN: Perhaps, perhaps.

11          THE WITNESS: I do want to go back, though, and  
12 ask, I guess correct one thing with regard to the execution  
13 of the easement. Mr. Hearing Examiner, you correctly  
14 pointed out the schedule of payments that are identified in  
15 this. And one of the reasons why we did not want to execute  
16 the agreement right away is because it does require a  
17 \$100,000 payment to be made to Park and Planning upon the  
18 execution.

19                 And I believe Mr. Knopf mentioned that he would be  
20 comfortable with the exact agreement with a binding element  
21 that would require execution prior to preliminary plan or  
22 prior to submission. I would feel personally much more  
23 comfortable with that situation than being required as part  
24 of this hearing process to execute the agreement, and then  
25 write a check for \$100,000 in accord with the agreement.

1           I don't want to be in violation of the agreement  
2   at the time it's executed. And the easement is only granted  
3   solely to EYA for the purpose, in paragraph five, of  
4   constructing a townhouse development per a site plan  
5   approval.

6           And so it seems to me that, you know, given the  
7   purpose, given the requirement that, if it's acceptable to  
8   Mr. Knopf, that having the agreement in its form with a  
9   binding element to be executed upon the decision of the  
10   District Council or prior to preliminary plan, would be a  
11   far more palatable situation than executing it right now.

12           MR. GROSSMAN: I can understand that. What about  
13   that, Mr. Knopf?

14           MR. KNOPF: I have no objection.

15           MR. GROSSMAN: Okay.

16           MR. KNOPF: But I think you may have to tweak some  
17   language in the binding elements.

18           MR. GROSSMAN: That's fine. All right. And that  
19   will solve another problem of waiting and keeping the record  
20   open for that purpose. All right. I think I can understand  
21   your concerns about that, given the language in the  
22   agreement.

23           THE WITNESS: Thank you. Let me move on. This  
24   would be, if I can remember, 41. I think it's F, G.

25           MS. BAR: Let me get that.

1 THE WITNESS: 41G.

2 MR. GROSSMAN: 41F is the one you had up on the  
3 board, so the next one --

4 THE WITNESS: Right. So we're going to the next  
5 slide is G. And this is the aerial photograph of the block  
6 plant today. And I believe we, somewhat, again, given the  
7 order of testimony, there was testimony raise with regard to  
8 the encroachments. You can see, basically, the site is  
9 almost 100 percent impervious. I believe it's 96, 94  
10 percent impervious today where it's basically paved. There  
11 was testimony about its operations.

12 This facility here was actually a manufacturing  
13 facility for brick and block, which is not currently used  
14 today. Tremendous deterioration. There's been  
15 encroachments where even some of the demolished components  
16 of the facility have been dumped in the rear of this  
17 property here, some dumped off site.

18 MR. GROSSMAN: The rear, when you say the rear of  
19 this property?

20 THE WITNESS: The rear, I'm sorry, of the 1.8 acre  
21 property along the Crescent Trail kind of property boundary.

22 MR. GROSSMAN: In other words the subject site.  
23 It's dumped within the subject site, close to the Capital  
24 Crescent Trail.

25 THE WITNESS: Correct. Correct, both within and

1 off of the subject site there have been encroachments and  
2 dumping of material. And so just, I think again, I don't  
3 need to rehash why not only the community seems to believe  
4 that this would be a better use as residential, but some of  
5 the existing, this property has been clearly used in a way  
6 that is probably not as compatible to park land as  
7 residential would be.

8 MR. GROSSMAN: Right.

9 THE WITNESS: So there are some, the next will be  
10 41H --

11 MS. BAR: H.

12 THE WITNESS: -- which are some photographs of the  
13 existing block plant, looking at the site. Somebody  
14 mentioned earlier that today the property is primarily used  
15 as a distribution facility. You do see the stacks of brick  
16 and block kind of piled up on the property waiting for  
17 distribution.

18 You can see broken pallets of brick around the  
19 site, you know, some of the other sites. And you can see,  
20 basically, it's 100 percent paved and concrete today.

21 Next is 41I which is some photographs of the  
22 adjacent stream. Today the stream, and our engineer, expert  
23 will get into more details about this, but today the stream  
24 channel, certain portions of the site, is actually a  
25 concrete culvert. There is vandalism and other, you know,

1 maybe creative art work that's been handled throughout the  
2 site. But again, it's not the most sightly looking property  
3 today.

4           This is a graphic representation of the site. And  
5 it's -- basically, a relatively small part of what's really  
6 pervious area, 6.7 percent. But again, if you were actually  
7 out there on the property, these areas marked in green on  
8 this exhibit, and this is 41J, are actually, in many cases,  
9 filled with concrete debris and other elements. So although  
10 it's pervious, it's still not the most attractive situation.  
11 And those would all be cleaned up.

12           The next slide is 41K. And this is an exhibit  
13 showing our proposed concept plan of the location of the  
14 easement here in the lower right hand corner, providing the  
15 access to Little Falls Parkway. It's basically a two-lane  
16 roadway coming in across, crossing a bridge that crosses the  
17 culvert stream area, and then connecting to a roadway within  
18 the site that circulates up across from right to left of  
19 this particular exhibit, showing the concept site plan,  
20 forming a T-intersection down here at this end of the  
21 property. Turning radiuses meet all the Fire Department  
22 access requirements.

23           MR. GROSSMAN: When you say at this end of the  
24 property --

25           THE WITNESS: That would be on the left side of

1 the exhibit.

2 MR. GROSSMAN: Which is, I guess, the southern  
3 end?

4 THE WITNESS: Southern end. Southern end. Right.

5 We are showing a total of 30 units on the concept plan. 25  
6 of the units are garaged, market rate townhouses. There are  
7 five MPDU units. The five MPDU units are located disbursed  
8 throughout the development. There is one located here on  
9 lot number 7, three on 23, 24 and 25, and then one up on lot  
10 21.

11 We're showing a decorative paving treatment of the  
12 edge of the drive isle. The drive isle is proposed at 20  
13 feet. The decorative paving would be four feet on either  
14 side of that, basically, to provide a delineating from the  
15 drive isle itself. But it would also really act as the  
16 curb, the driveway curb apron for those particular units.

17 MR. GROSSMAN: That's the orange?

18 THE WITNESS: That would be the orange banding  
19 that you see there. Right.

20 MR. GROSSMAN: Where is the access, the truck  
21 access to Butler Road?

22 THE WITNESS: Sure. The truck access to Butler  
23 Road is here on the northern end of the property where the  
24 pointer is now, basically across the easement connecting to  
25 Butler Road at this stage.

1 MR. GROSSMAN: Okay.

2 THE WITNESS: So it's basically, it's, in some  
3 degree, it shares an access point to where the noncommercial  
4 vehicles would access the site as well.

5 MR. GROSSMAN: I see.

6 THE WITNESS: And then the eight visitor parking  
7 spaces, there are six located in this area, along the  
8 northern end of the site, and two located down here toward  
9 the southern end of the property.

10 MR. GROSSMAN: Where are the two on the southern  
11 end?

12 THE WITNESS: I'm sorry, right down here, opposite  
13 lots one and two --

14 MR. GROSSMAN: Oh, I see. Yes. I see.

15 THE WITNESS: -- and adjacent to lot 30.

16 MR. GROSSMAN: Do you have any suggestions for the  
17 parking issue?

18 THE WITNESS: I do. And I want to, actually, if  
19 you would like me to address that right now I can, or  
20 just --

21 MR. GROSSMAN: You can finish your --

22 THE WITNESS: It is in order. I will get to that.

23 MR. GROSSMAN: Okay. Sure.

24 THE WITNESS: With regard to proposed green area  
25 of the site, you know, as redeveloped will not only place



1    this area down here, which is at the eastern end of the  
2    site, which is kind of this slightly darker green color,  
3    which is off the property but to the area which is currently  
4    encroached on today, that would all be put back in green.  
5    We're not counting that in our calculations, as well as some  
6    encroachments up in the area on the western boundary, closer  
7    to the Capital Crescent Trail; and also on the southern  
8    boundary there are some areas of encroachments that would  
9    all be put back into a green natural vegetative state.  
10   We've agree, as the community has pointed out, to provide  
11   buffering in this area, as well as along our property as  
12   well.

13               MR. GROSSMAN:   That's the area adjacent to Little  
14   Falls Parkway?

15               THE WITNESS:   Correct.   Thank you.   And then the  
16   total green area is somewhere in the 34 percent range,  
17   compared to about 6 percent today, which exceeds the 30  
18   percent that's required in the RT-15 zone.

19               MR. GROSSMAN:   The binding element is 30 percent  
20   of the -- the schematic development plan itself shows a bit  
21   over that, 34 percent.

22               THE WITNESS:   Right.   Right.   The other element  
23   that has been discussed with the community, Parks, as well  
24   as Park and Planning is an access to the Capital Crescent  
25   Trail.   We're proposing that currently being on the access

1    easement itself from Little Falls Parkway, coming into the  
2    site at this point on, adjacent to the private roadway here,  
3    and the continuing adjacent to lot 21 on the northern  
4    boundary of the property, and then going off property and  
5    connecting to the Capital Crescent trail here.

6               MR. GROSSMAN:   I see.   So that's at the extreme  
7    northern end.   Okay.

8               THE WITNESS:   Okay.   With regard to parking, as  
9    you pointed out, the requirement for parking for this  
10   project is two units per dwelling unit.   So we are providing  
11   63 spaces by code at this point, which we believe exceeds  
12   the requirements.

13              I think we're willing to withdraw the requests  
14   with regard to the 20 percent reduction in MPDU's.   We  
15   really don't need it anyway.   We're providing more than  
16   what's required at 63 spaces compared to 60.   So the idea of  
17   only 58 being required, I think, is off the table.

18              MR. GROSSMAN:   I was curious as to where that came  
19   from.

20              THE WITNESS:   I believe there was some -- I didn't  
21   personally come up with it, but I believe that there is some  
22   provision as it relates to senior housing and MPDU units.  
23   That does reflect what I --

24              MR. GROSSMAN:   Yes, that's what I, that's what I,  
25   when I looked it up it said it was under senior housing, and

1 then it had 20 percent off. But the provision under which  
2 that 20 percent provision is, is for senior adults and  
3 persons with disabilities. So I wondered how that applied.

4 Are we saying that it doesn't really apply?

5 THE WITNESS: We don't believe it applies.

6 MS. BAR: We don't believe it applies.

7 THE WITNESS: Right. So the requirement would be  
8 60. We think we exceed that. This is an illustrative plan  
9 at this stage. We understand parking is an issue. And I  
10 guess I'd like to point out a couple of things. In certain  
11 of the MPDU units, for example, on lot 21 and on lot 7, lot  
12 7 could actually be slid back towards the south to provide  
13 another full size space in its driveway. That would fully  
14 meet code.

15 As currently lot 21 has that space there today,  
16 that wasn't actually taken into account and counted. So we  
17 could technically provided, you know, a minimum of two  
18 additional spaces, and have the count actually at 65. I'm  
19 sorry, it would be --

20 MS. BAR: 66.

21 THE WITNESS: -- 66. No -- yes, 66 spaces.  
22 Correct. So --

23 MR. GROSSMAN: I thought you said two additional.

24 THE WITNESS: I'm sorry, two addition. 65.

25 MS. BAR: Sorry.

1           THE WITNESS: And potentially, we have the same  
2 opportunity on lot 25 as well. And I'm just kind of going  
3 through this. What this particular drawing shows, which is  
4 41 --

5           MR. GROSSMAN: M as in Martin.

6           THE WITNESS: Thank you -- is a drawing without  
7 actually technically counting official spaces. I believe  
8 the previous community representative talked about the  
9 possibility of having driveway spaces. Again, the  
10 architecture hasn't been fully developed, but in typical  
11 situations where we do front loaded garages, we recess the  
12 garage door approximately two feet into the footprint of the  
13 unit, providing two feet of depth, plus the dimension that's  
14 actually in the driveway today.

15           We believe there's another 32 spaces that are  
16 shown in blue on this particular drawing, that would be  
17 located in the driveways of the units. They are primarily  
18 in the market rate units in blue. There are a couple on lot  
19 24 that would be on the MPDU's, and lot 7. But I think we  
20 can actually slide lot 7 back and have a full size space to  
21 count on that particular unit.

22           But my point here is that a dimension of, I'll  
23 actually put up this. We have this in a hard copy exhibit.  
24 That is eight wide by 18 feet to accommodate actually an  
25 additional 32 spaces on the property itself, and then add a

1 compact space which is 18 by 16 and a half feet wide, an  
2 additional 20 spaces. We're not technically counting those,  
3 because we don't necessarily need them for code purposes,  
4 because we do exceed the code.

5           It does show that in almost every instance, a  
6 visitor could come and park in the driveway of that home  
7 that they were going to visit, and be fully out of the  
8 roadway on that person's property.

9           Now, there are all different types of situations  
10 of where additional parking is required. We have, you know,  
11 the one visitor who may come by on a Friday night, or  
12 somebody who comes by for lunch. Then we have the situation  
13 of, you know, broader parties.

14           It was also mentioned earlier, and I'll keep this  
15 in our homeowner documents that are recorded on the  
16 property, and they are full disclosure statements that are  
17 required at the time the purchaser puts that property under  
18 contract, the homeowner does -- do require each homeowner to  
19 use their garages for their own personal parking spaces and  
20 not for storage. And so therefore it is another attempt to  
21 force people, basically, to use the garages for what they  
22 are intended to, as opposed to storage, parking off the  
23 driveways, leaving those spaces.

24           And we believe that a normal situation that the  
25 owners of the units will park in their garages, and the

1 visitors who come by in normal situations will both park in  
2 the driveways of their visitor, the person that they are  
3 actually visiting.

4 In addition to that, because now by taking  
5 advantage of those driveway spaces, we're actually able to  
6 accommodate all of the MPDU's with two car parking. Then  
7 you have the eight visitor spaces on the site, it's  
8 potentially that lot 23 would require one of those spaces to  
9 be a reserved space for that MPDU, but it would leave an  
10 additional seven overflow spaces for the overall community  
11 in addition to the 32 plus 20 or 52 guest spaces that  
12 already potentially exist on the site, not counted by code.

13 MR. GROSSMAN: Okay, well, hold on. Let me stop  
14 you for a second. First of all, that exhibit that you're  
15 looking at, has that been marked?

16 MS. BAR: No, we want --

17 MR. GROSSMAN: All right.

18 MS. BAR: -- to put this in as 46. And it's the  
19 same as the slide 47M.

20 MR. GROSSMAN: Not as 46, you're taking about 48.

21

22 46 is Dan Dozier, 47 is the photographs. So this would be  
23 48. And this is a parking, extra parking diagram. Is that  
24 a fair characterization?

25 (Exhibit No. 48 was

1 marked for identification.)

2 THE WITNESS: Sure. Let's label it that way.

3 MR. GROSSMAN: And now if I understand you  
4 correctly, Mr. Youngentob, this, these extra parking spaces  
5 aren't full size code parking spaces? Is that what you are  
6 saying?

7 THE WITNESS: Well, the compact space is a full  
8 size code space, as a definition as a compact space, even  
9 though they're not being counted in the parking count. The  
10 modification of the standard space is in the width, I  
11 believe. It's typically eight and a half feet --

12 MR. GROSSMAN: Right.

13 THE WITNESS: -- as opposed to eight feet wide.  
14 So it is six inches narrower than you would otherwise have  
15 in a full size space.

16 The reality today, I know there are plenty of  
17 people who still drive SUV's, but in most situations, in the  
18 townhouses that we're selling, most people still do -- they  
19 maybe have one big car, which is fully accommodated in the  
20 garages, but there are smaller cars out there that don't  
21 even come close to the 18 foot length or the eight feet of  
22 width.

23 MR. GROSSMAN: So under your proposal, most of  
24 these units would have, actually have three parking spaces.

25 THE WITNESS: Actually four.

1 MR. GROSSMAN: One in the garage --

2 THE WITNESS: No. Two in the garage.

3 MR. GROSSMAN: I'm sorry.

4 THE WITNESS: Two in ever single garage.

5 MR. GROSSMAN: There are four spaces is what you  
6 are saying.

7 THE WITNESS: They would have four spaces.

8 MR. GROSSMAN: Okay. And is there any particular  
9 reason why you didn't include that as part of your schematic  
10 development plan?

11 THE WITNESS: Again, I think it was Mr. Knopf who  
12 mentioned the idea of statutory versus practical.  
13 Technically, we can't, you know, we can't modify the  
14 definition of what a parking space is. So staff wouldn't  
15 allow us to count the eight by 18 foot space. So you're  
16 really not allowed to count that particular space in the  
17 counts.

18 From a practical standpoint, they exist on the  
19 surface in the driveway pad, and it would be used in that  
20 way. And so we do think we meet the code, and the fact that  
21 not only have we beaten the code, but the guest spaces on  
22 site, I mean, other jurisdictions typically the code is 2.2  
23 spaces for every unit. And again, we feel like we are  
24 meeting that. That would be 66 spaces in this particular  
25 case. Is that right? I'm sorry. I'm sorry.



1           MR. GROSSMAN: You have, as I understand, you're  
2 STP at 63 spaces, right?

3           THE WITNESS: 63. Correct.

4           MR. GROSSMAN: Okay. So you had 63 that by the  
5 count as, I won't say legitimate, but accepted as standard  
6 parking spaces. And --

7           THE WITNESS: And I think we can actually, I think  
8 what I was saying is that on lot 21 we can actually count an  
9 additional space there by code, at least code, and also on 7  
10 we can make a modification to the site plan, sliding it back  
11 to accommodate a full size space in that particular driveway  
12 as one of them. So we can pick up two more by code to solve  
13 their two MPDU units on 7 and 21.

14          MR. GROSSMAN: Plus two which brings you up to 65  
15 which you can fit on the STP, and then it could be a general  
16 note, I suppose, on the STP that there is room on the  
17 driveway, on the driveways to accommodate how many  
18 additional spots?

19          THE WITNESS: Well, I think including those two  
20 would be an additional 50.

21          MR. GROSSMAN: An additional 50. Okay. Plus 50  
22 additional room for, spaces that are the right length, but  
23 six inches too narrow in width?

24          THE WITNESS: Correct. And in some cases, they  
25 are a legitimate compact size space.

1           MR. GROSSMAN: You might want to phrase a general  
2 note for the STP. You have to, obviously, if you're going  
3 to change the parking statement on there anyway, because  
4 you're no longer claiming the 20 percent off. And you are  
5 obviously adding all these binding elements.

6           But I guess you could note on there that there  
7 will be extra room, practically speaking, on the driveway,  
8 although they are not standard spaces, so they can't be  
9 counted as being fulfilled, the standard space count.

10          I think what most people are concerned about the  
11 parking is the fact that it appears to have been not enough  
12 parking, even if you met the statutory requirements. But  
13 from what you are saying here, you actually could, in  
14 practical terms, supply sufficient parking on the site.

15          MS. BAR: And we can add that, certainly, that the  
16 statutory requirement should be 60; that we will revise,  
17 that we are providing -- I think we can amend it to be 65,  
18 and in addition the 60 additional, which will be, you know,  
19 slightly below the required minimum from the standards that  
20 the County requires.

21          MR. GROSSMAN: Right.

22          MS. BAR: So we'll make that change on the STP.

23          MR. GROSSMAN: You can't count them as parking  
24 spaces with the staff by code, but you can, it seems to me,  
25 put a general note on there saying that.

1 MS. BAR: That they are available.

2 MR. GROSSMAN: Okay. Does that sound reasonable  
3 to you, Mr. Knopf, for not?

4 MR. KNOPF: I would like to ask some questions.

5 MR. GROSSMAN: Okay.

6 THE WITNESS: All right. I better keep going. So  
7 the next -- I guess that's it for the Powerpoint  
8 presentation.

9 MR. GROSSMAN: So you're going to give me a disk  
10 with all the Powerpoint slides on it, Ms. Bar?

11 THE WITNESS: We can do that, yes. So I'm  
12 thinking --

13 MS. BAR: Ms. Bar, did you catch that? Thank you.

14 THE WITNESS: -- Exhibit 47.

15 MR. GROSSMAN: We're up to 49.

16 (Exhibit No. 49 was  
17 marked for identification.)

18 MS. BAR: This is 49, yes.

19 THE WITNESS: 49. So --

20 MR. GROSSMAN: I'm running out of paper, so you're  
21 going to have to stop talking soon. I ran out of space on  
22 the exhibit list.

23 THE WITNESS: So we want to introduce Exhibit 49,  
24 which is basically an aerial photograph of Butler Road, an  
25 additional picture of Butler Road as part of this. As it

1 was pointed out earlier that Butler Road has a variety of  
2 industrial uses, including auto repair. There is an  
3 athletic training facility adjacent to the property, one  
4 property on top of another property, and there is some,  
5 approximately 13 parallel spaces, I think one of the people  
6 testified 12 to 15 spaces. We've actually counted 13  
7 parallel spaces along Butler Road, that are not part of any  
8 private land. They are actually part of the public right-  
9 of-way. And --

10 MR. GROSSMAN: Well, I don't think Butler Road  
11 parking is a solution to your parking problem.

12 THE WITNESS: It's not a solution from the  
13 standpoint of day-to-day somebody coming by and, you know,  
14 wanting to visit or stop in. But as far as, there's been  
15 reference or concern raised with regard to somebody  
16 potentially having a party. Well, most of those parties  
17 exist either in the evenings or on the weekends. Most  
18 people aren't having parties mid-day when the bulk of uses  
19 along Butler Road exist.

20 And so we do believe that in the case of, you  
21 know, severe overflow, if you are going to have Thanksgiving  
22 dinner, you would potentially say to somebody, you know, we  
23 want you to come and park in our neighborhood, use the two  
24 spaces in our driveway, and then potentially there is the  
25 ability to park along Butler Road.

1                   And I don't believe, you know, in an urban  
2   situation, having to walk 100 yards to get to somebody's  
3   home in that specific situation where the homeowner has  
4   identified that parking is going to be an issue and park  
5   here. So we do believe that these spaces do provide some  
6   overflow during evenings and weekends.

7                   And the other thing I wanted to introduce is  
8   Exhibit 50 which is a letter from Atlantic Valet, which  
9   basically deals with the issue of, you know, the large event  
10   that could occur in terms of party. We contacted Atlantic  
11   to say, you know, how do you deal with situations like this  
12   where you have communities, whether it be single family home  
13   development or townhouse development, or whatever, that  
14   somebody is planning a party and does have significant  
15   parking needs.

16                                   (Exhibit No. 50 was  
17                                   marked for identification.)

18                   THE WITNESS: And basically, what they told us is  
19   they have a marketing team that goes out into the community  
20   and canvases local property owners to find parking  
21   alternatives where they can then bring in a valet operation  
22   to park cars. And we believe that that's a very viable  
23   solution. In this particular situation there are a number  
24   of situations, the athletic training facility, if you go on  
25   Google maps today and do a Google of this area, this parking

1 lot, you know, even in this photograph shows a number of  
2 vacant spaces. But they do arrange, what Atlantic  
3 does is they'll arrange with these local property owners to  
4 find spaces in the nearby vicinity, and then provide those,  
5 you know, obviously, at a valet cost to the homeowner. So  
6 in the case of, you know, somebody is having a 50th birthday  
7 party, and they wanted to have it at their home, we believe  
8 that still there are methods to accommodate a party in this  
9 community, by bringing in a valet service for a large scale.

10

11 And I don't believe that's dissimilar from other  
12 situations around the County in very, very tight areas near  
13 the District where you have parking restrictions, where you  
14 have people who have no garage parking or no driveway  
15 parking at all, you know, it's impossible to find a space on  
16 the street sometimes.

17 You know, you go to dinner on Connecticut Avenue,  
18 and you might have to walk, you know, 200-300 yards on  
19 various locations around Connecticut to find a place to park  
20 to go to restaurants in those areas.

21 So I think people who live in urban areas do get  
22 more used to the constraints of urban parking. This site is  
23 unique in that the community has made it very clear, and we  
24 respect that, that they don't want people parking on Little  
25 Falls Parkway. It's not allowed. We don't want that

1    either.  And so I think we're going to have to find  
2    alternatives that make sense in the, you know, extreme  
3    areas.

4               We do believe, you know, from a day to day  
5    standpoint, that there is more than sufficient parking on  
6    the site.  And if a homeowner chooses to buy in this  
7    community, they'll be notified of the constraints in  
8    advance.  They'll see site plans.  They'll have disclosures.  
9    And they will have to make that choice.

10              And the homeowner has the right to decide whether  
11    or not they want to buy there in the end, and that there are  
12    solutions for the large parties that Mr. Knopf and others  
13    have pointed out are some of their biggest concerns for the  
14    overflow.

15              MR. GROSSMAN:  Okay.

16              THE WITNESS:  The last thing that I want to go  
17    into is just to introduce the revised binding elements  
18    which, I guess, would be a new exhibit.

19              BY MS. BAR:

20              Q     Yes, but one thing that I'm, as I recall, one of  
21    the hearing examiner's questions was that there is a  
22    provision of the zoning ordinance that requires a staggering  
23    of the faces of the town homes, and he wasn't seeing that on  
24    the plans.  And can you briefly address that?

25              A     I can.  You know, basically, it is a schematic

1 level of detail. We haven't created the architecture for  
2 this site. In one of the earlier exhibits I did show Park  
3 Potomac, which I believe was our Exhibit 41A, the photograph  
4 of Park Potomac. And those units actually do not have the  
5 two foot jog in them as well.

6           It's our kind of belief as an urban developer that  
7 a lot of those town home regulations, in terms of road  
8 regulations, were developed more in a suburban environment,  
9 a suburban philosophy. And so when you, even in other urban  
10 areas, whether it be Old Town, Capital Hill, many of the  
11 town homes are developed with a consistent facade frontage,  
12 and then through the use of various treatments, like  
13 projecting bays and things like that, that's how you create  
14 the variation, the architectural variation.

15           MR. GROSSMAN: Well, I'm not --

16           THE WITNESS: We do plan, we do plan to ask for  
17 the waiver of that.

18           MR. GROSSMAN: Okay. I'm not commenting on  
19 whether or not it's desirable. It's just a statutory  
20 requirement. It can be waived under certain circumstances  
21 specified. And I think it's in connection with MPDU's, but  
22 it's a statutory requirement.

23           THE WITNESS: Right.

24           MR. GROSSMAN: And if it's not waived, then it  
25 will apply.



1           THE WITNESS: And we do plan to seek the waiver on  
2 that.

3           MS. BAR: Right. And we would address this again,  
4 the detail of it at site plan.

5           MR. GROSSMAN: Okay. Well, I think you probably,  
6 just so it's clear, in your general notes, that you are  
7 going to seek the waiver of the road requirements. You're  
8 already asking for a waiver in terms of the number of  
9 townhouse uses in a row, because one of them is nine in the  
10 stick and the row requirements are limited to eight, if I  
11 recall. And so I don't have a problem with it if site plan  
12 doesn't have a problem with it. I just want to make sure  
13 that we're consistent with the statute.

14          THE WITNESS: And that particular row that does  
15 have the nine, in response to that, the way the math  
16 actually works for this particular project, and it's  
17 somewhat of, I guess, an anomaly in the mathematics of MPDU  
18 calculations --

19          MR. GROSSMAN: Yes.

20          THE WITNESS: -- that we're really only required  
21 to have four MPDU's for the number of units that we're  
22 proposing on the site. Staff, because of really the  
23 rounding issue, came back and said, would you provide a  
24 fifth? And we committed to provide the fifth, even though  
25 by mathematical calculation you only need four. And so it's

1     that fifth MPDU that went into the string that created the  
2     unit, the string of nine.

3             MR. GROSSMAN:   Okay.   Once again, I'm not going to  
4     comment on whether or not nine or eight is good for rows of  
5     townhouses.   That's really a site plan issue.   But I do want  
6     to make sure that when I send it up I say, you know, the  
7     statute is being complied with or not.   And if it's not,  
8     then there should be a waiver.

9             THE WITNESS:   Right.

10            MS. BAR:   We'll put that note on the plan.

11            MR. GROSSMAN:   Yes.

12            THE WITNESS:   So I guess the last thing we wanted  
13     to introduce was the revised binding elements that include  
14     now 12 binding elements.   And I don't have to read them all  
15     but I'll just, very briefly, number one is density is  
16     limited to no more than 30 townhouses of which five will be  
17     MPDU's, no more than five will be MPDU's.

18            Green space set minimum of 30 percent.   Building  
19     height will be limited to 35 feet.   Again, you know, the  
20     impervious area of the site, we'll be reducing it from the  
21     current condition with final reductions determined at site  
22     plan.

23            The market rate, yes, is to provide garage parking  
24     spaces for at least two cars, and MPDU's will provide garage  
25     parking for at least one car, and then additional parking

1 spaces for guests.

2 I guess you were referring to item six as being  
3 able to make it a binding element in terms of it is a -- you  
4 know, we're happy to provide the signage at our expense, but  
5 obviously, you know, there isn't signage there today. And  
6 so I think it's a question of whether or not MNCPPC would  
7 allow us to actually do that. And --

8 MR. GROSSMAN: Right, but I -- to me, an element  
9 is not a binding element if it's subject to somebody else's  
10 approval, absolutely subject to somebody else's approval.

11 Now, you can have a portion of it, it seems to me.

12 Or, you know, I just don't want, I don't want anybody to be  
13 mislead from the community as to what's finding and what's  
14 not. If something is subject to later approval, it's not  
15 exactly binding.

16 MR. KNOPF: I know we don't feel anybody is going  
17 to be mislead. Otherwise, we just don't get it. There is  
18 no requirement, so the developer can do that which he said  
19 he would do. He didn't have any problem with that, and the  
20 community didn't.

21 THE WITNESS: Yes. I think, you know, these have  
22 all been worked out with Mr. Knopf. And I understand that  
23 there are concerns, but a lot of these were raised by them.  
24 We were trying to respond to his concerns to provide more  
25 clarity or I guess a greater commitment on our part. But I

1 think in the negotiation or the discussion, I mean, you  
2 know, we can't commit to do it if it's not allowed by them.  
3 So that's why the modification language exists on some of  
4 these.

5 MR. GROSSMAN: All right. And eight was another  
6 one.

7 THE WITNESS: Yes. Well, seven, but we didn't  
8 have any questions in regard to seven. What's the concern  
9 about --

10 MR. GROSSMAN: Well, let me see. Maybe it's  
11 different. I had a --

12 MS. BAR: Yes, I noted that you thought it was  
13 conditional. But I think the numbering might have changed.

14 MR. GROSSMAN: Yes, that's possible. I'm looking  
15 at only what I had. Yes. What I have is eight is  
16 different. I'm just looking at the Planning Board letter.  
17 That's all I have.

18 MS. BAR: Yes, I --

19 MR. GROSSMAN: So what number was that. Yes, that  
20 would be number 11 in your system.

21 MS. BAR: So why don't we just go through --

22 THE WITNESS: Eight covers truck ingress and  
23 egress to the site, will be solely via connection to Butler  
24 Road. And in connection we'll have some type of traffic  
25 control mechanism restricting through traffic from Butler to

1 Little Falls Parkway, and Little Falls Parkway to Butler  
2 Road, so as to prevent cut through traffic. Number nine --

3 MR. GROSSMAN: Hold on one second.

4 THE WITNESS: Yes, sir.

5 MR. GROSSMAN: That was number five. See, I just  
6 want to make sure, also, that anything that's been added,  
7 that technical staff gets to look at, although when you're  
8 talking about special exceptions, they are, they have to, by  
9 statute, get a copy of the changes.

10 If they don't, by statute, they are not required  
11 to get a copy of the changes. But in the past, they've  
12 gotten upset, let's say, if we didn't want to run it by them  
13 and there were additions or changes to the binding elements,  
14 because they then have to try to make something work that  
15 they may feel can't work. So the new --

16 MS. BAR: They have seen these, so if that --

17 MR. GROSSMAN: I'm the only one who hasn't.

18 MS. BAR: Yes. Sorry.

19 MR. GROSSMAN: Is that the idea?

20 MR. KNOPF: I will say that were added at the  
21 suggestion of the Planning Board themselves. They said how  
22 come there wasn't one of these and one of those. So they  
23 got put in.

24 MS. BAR: Right.

25 MR. GROSSMAN: Well, their letter doesn't reflect

1     that.  Their letter only reflects nine of these.  So --

2                 MR. KNOPF:  Right but they --

3                 MR. GROSSMAN:  -- the list I've been handed,  
4     Exhibit 51, I guess it is, right?  Let's just make sure.  
5     Yes, 51, has 12 binding elements.

6                         (Exhibit No. 51 was  
7                         marked for identification.)

8                 MR. KNOPF:  Yes, but I mean at the hearing before  
9     the Planning Board they suggested that we should add some,  
10    and these were the ones that got added.

11                MR. GROSSMAN:  Okay.

12                MR. KNOPF:  With the exception of the parking, the  
13    no parking signs.  That was not discussed before the  
14    Planning Board.

15                MR. GROSSMAN:  Well, whatever it is that's added  
16    after the fact, it will go back to them and you have to give  
17    them time.  I don't know if they're going away or not, but  
18    we do have to give them an opportunity opine on it.  So --

19                MS. BAR:  Staff.

20                MR. GROSSMAN:  Yes.

21                MS. BAR:  Yes.  They've had them, but I'm sure  
22    they will get something to you.

23                MR. GROSSMAN:  All right.  So --

24                THE WITNESS:  Number nine covers the access to the  
25    Capital Crescent Trail.  Number 10 is dealing with removal

1 of the paving and debris from the existing industrial site  
2 that's on park land. 11 deals with the consideration for  
3 the easement to Little Falls Parkway, and the easement  
4 agreement. And I think this is probably where we can add  
5 the language about the timing of its execution.

6           Number 12, consistent with the easement agreement  
7 and the CCT public access easement, the job will also  
8 include a green landscape easement granted to Park and  
9 Planning as an aesthetic green space and will be revised by,  
10 reviewed by the users of the park and trail such as an area  
11 at least equal in gross square feet to the easement granted  
12 by Park and Planning.

13           So the idea of where we're asking or receiving  
14 from Park and Planning approximately a 4500 square foot  
15 easement for the roadway, then we will grant a reciprocal  
16 easement back, in addition to the pavement, for landscaping  
17 and screening purposes.

18           MR. GROSSMAN: My concern about this provision is  
19 actually generated by my not having seen the easement  
20 agreement, because I misread the word consideration, not  
21 realizing you meant like contract consideration.

22           MS. BAR: Okay. I understand --

23           MR. GROSSMAN: And I thought that it was waffle  
24 word in here. So that's what accounted for that.

25           MS. BAR: Okay. That makes sense.

1           THE WITNESS: And then on here is the nonbinding  
2 element. You know, again, I understand how it is difficult.  
3 We're not comfortable to participate in the process, but we  
4 understand that it's obviously not binding on --

5           MR. GROSSMAN: I have no problem with your having  
6 a nonbinding element, as long as it's labeled nonbinding.  
7 And there was at, what's now number 12, which was number  
8 nine in my list, you have language at the sole discretion.  
9 Where is that?

10          MS. BAR: Again, that was language --

11          MR. KNOPF: That you guys added.

12          MS. BAR: Yes.

13          MR. KNOPF: That's not my language.

14          MS. BAR: Yes. That was language, that was  
15 language that the Park and Planning legal staff added.

16          MR. GROSSMAN: To the extent feasible and  
17 practicable, at the sole discretion of the applicant, the  
18 easement shall be concentrated --

19          THE WITNESS: Where is this?

20          MS. BAR: I'm sorry. I'm looking at the wrong  
21 one.

22          MR. GROSSMAN: This is the last sentence in number  
23 11, or number 12, rather.

24          MR. KNOPF: The coordinating committee wanted to  
25 have an easement given back. And the applicant said they



1   were reluctant at this stage of the game to locate the  
2   specific location of that easement, because it's still in --  
3   it's before site plan, and they wanted to have some  
4   fluidity. And we had wanted it, to the extent possible,  
5   near Little Falls Parkway to provide the screening.

6               MR. GROSSMAN: Right.

7               MR. KNOPF: But they were reluctant to commit,  
8   because they hadn't done enough yet to know whether that's  
9   possible. So they added -- it's not meaningless, this  
10   thing. I mean, there is nothing there that binds anybody.

11              MS. BAR: Well, except we have --

12              MR. KNOPF: And we're not objecting. We're not  
13   objecting because we understand they need the flexibility to  
14   locate this. But to say, I think it's overkill to say,  
15   extent feasible and practical and at their sole discretion.  
16   But if they are happy with that, we're not objecting.

17              THE WITNESS: Yes, I mean, personally, I mean, the  
18   fact that we are getting the easement, and paying for it,  
19   and having to give another easement back, is what is  
20   meaningless to me. I didn't understand why we had to do  
21   that, but we were trying to accommodate Mr. Knopf's request.  
22   And so we wanted the flexibility to try to locate it where  
23   we could without having it impact the site plan.

24              MR. GROSSMAN: All right. If everybody is happy  
25   with it.

1 THE WITNESS: I think we're happy.

2 MS. BAR: We're happy.

3 THE WITNESS: I think we're happy.

4 MR. GROSSMAN: It's very, to say it's waffling is  
5 to put it blandly when you say, to the extent feasible and  
6 practical, and then at the sole discretion of the applicant.

7 But I think there is, I mean, the fact that you do say that  
8 you will include a green landscaping, granting that, and the  
9 easement shall be at least equal in gross area to the gross  
10 area of the easement granted by -- that seems to me to be  
11 the strong operative portion of it. So, okay.

12 MR. KNOPF: But may I get a clarification? My  
13 understanding is, based on our prior discussion, the binding  
14 elements will need a little work, so to incorporate, we  
15 talked about incorporating in reference to the exhibit for  
16 the agreement?

17 MS. BAR: For the agreement.

18 THE WITNESS: Yes.

19 MR. KNOPF: Yes. So we need to --

20 MR. GROSSMAN: Right.

21 MR. KNOPF: Okay. As long as we'll have an  
22 opportunity that we can discuss it, we don't have to do that  
23 today and waste people's time, but we could, Cindy and I  
24 could reach agreement.

25 MS. BAR: We can reach agreement --

1 MR. KNOFF: Yes.

2 MS. BAR: -- on the agreement language.

3 MR. GROSSMAN: And you can submit it. Don't, I  
4 wouldn't take too long to do it, because you want to get it  
5 over to the staff and give them time to review the final  
6 submission, their final version of the STP, and the final  
7 version of any other changed plans, and the final version of  
8 this. So we don't want to push this back down the road.

9 MS. BAR: We'll do it by tomorrow.

10 MR. KNOFF: I'm assuming we're going to be going  
11 full today.

12 MS. BAR: Right.

13 THE WITNESS: Perfect. That concludes my  
14 testimony.

15 MR. GROSSMAN: All right. Cross-examination,  
16 Mr. Knopf?

17 MR. KNOFF: Yes, I do, but can we do it --

18 MR. GROSSMAN: Do you want to wait until after  
19 lunch?

20 MR. KNOFF: I would prefer that. I don't think  
21 we'll have lunch. Do they have lunch at this hour?

22 MS. BAR: Excuse me, he thought he was finished,  
23 but there was one other thing.

24 MR. GROSSMAN: All right. No lunch for you.

25 BY MS. BAR:

1           Q     Could you just briefly address the issue of the  
2     RT-15 density, and why you think that is appropriate and the  
3     compatibility of that in terms of this site?

4           A     Sure. At the time the sector plan was done, RT-15  
5     didn't exist. And so, you know, the whole concept of urban  
6     town home densities were not really thought of at that  
7     stage. The whole pressure to bring development back in  
8     close didn't exist. I think at the time had RT-15 been  
9     around, it probably would have been the appropriate density  
10    for this particular site.

11                But I think the other kind of practical reality,  
12    and I think we're talking sometimes statutory and practical,  
13    you do have an existing operating business on the property  
14    today. And one of the things we have found in all of our  
15    redevelopment opportunities or situations, when you have an  
16    operating business, not only do you have the requirement to  
17    create enough land value to solve the land itself, but you  
18    have this additional pressure to basically solve the  
19    profitability of an operating business.

20                And so in this particular case, at an RT-10  
21    density, we could not create enough value for the land owner  
22    and for the operating business to relocate. And so I think  
23    in any situation where you have brown fields, where you have  
24    this ability to relocated an operating business, you do need  
25    to provide some type of density, bonus or density incentive.

1 I don't believe RT-50 is a bonus in this particular case,  
2 because I do believe it's the appropriate density,  
3 especially, and I think our land planner will talk more  
4 about the transitional densities and the relative density  
5 from property to property.

6 But in a practical sense at an RT-10 you could not  
7 create enough land value nor would you have the MPDU's that  
8 would go with this particular project. And so I think for  
9 the public benefit of all, which you've heard from the  
10 community, and I know we haven't heard all of them, about  
11 the strong desire to relocate the use, the density is a  
12 necessary requirement to see this thing actually happen.

13 MR. GROSSMAN: All right. Now, I notice  
14 Mr. Humphrey has arrived. You realize there is a rule,  
15 Mr. Humphrey, that anybody that arrives after 1:45 has to  
16 buy lunch for everybody else, because we are breaking for  
17 lunch now.

18 All right. So shall we return -- I'm sorry.

19 THE WITNESS: Do you want to ask --

20 MS. BAR: Do you want a couple question.

21 THE WITNESS: Do you want to question me?

22 MR. GROSSMAN: Well, we are going to have cross-  
23 examination after lunch because -- there's not going to be  
24 much available to you folks if you don't get to go now. So  
25 we were going to wait until after lunch for the cross-

1 examination.

2 MS. BAR: All right.

3 MR. GROSSMAN: Yes, sir?

4 MR. DYER: I won't be able to come back. I was  
5 just wondering if the gentleman could answer my question  
6 from earlier?

7 MR. GROSSMAN: Okay. And what was that again?  
8 I know you had --

9 MR. DYER: I just wanted to know if, could you  
10 list the meetings that were available to individual civic  
11 associations in the neighborhoods around the site --

12 MR. GROSSMAN: All right.

13 MR. DYER: -- prior to the January approval?

14 THE WITNESS: Our outreach to the community  
15 started back in June or 2010, and again, it was represented  
16 to us at the time that it was the Citizen's Coordinating  
17 Committee of Friendship Heights that represented the  
18 blanket, basically, all the neighborhood associations,  
19 including yours, that were covered in the area.

20 And so it was at least explained to us that the  
21 process that existed with CCCFH was that they go out and  
22 reach out and provide notice and information to all of their  
23 participating organizations.

24 So although we didn't come to your community  
25 association directly, we felt that we had met the intent by

1   being in front of the broader community groups and were  
2   relying to some degree on them to disseminate the  
3   information, in addition to the normal noticing provisions  
4   that were required under Park and Planning regulations.

5               MR. DYER:   Thank you.

6               MR. GROSSMAN:   Okay.   You're welcome.   And thank  
7   you for coming down here and sharing your points.   I  
8   appreciate it.   All right.   We'll come back at 2:30.   It's  
9   now five to.

10              (Whereupon, at 1:55 p.m., a luncheon recess was  
11   taken.)

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1                                   A F T E R N O O N   S E S S I O N

2                   MR. GROSSMAN:   We're back on the record.   Before I  
3   forget, when we leave the record open for you to submit the  
4   revised documents, make sure that you send copies not only  
5   to my office and technical staff, but also to Mr. Knopf,  
6   Mr. Dyer, and Mr. Humphrey.   Is there anybody else I left  
7   out?   I think you cover the umbrella so --

8                   MR. KNOPF:   I cover the umbrella.

9                   (Discussion off the record.)

10                  MR. GROSSMAN:   -- so that everybody has it, and  
11   we'll give everybody 10 days.   Okay.

12                  (Discussion off the record.)

13                  MR. GROSSMAN:   Mr. Humphrey, why don't you have a  
14   seat at the table, since you are here.   Mr. Humphrey, you  
15   can identify yourself, for the record, if you would, sir?

16                  MR. HUMPHREY:   Jim Humphrey, chairman of Planning  
17   and Land Use Committee for the Montgomery County Civic  
18   Federation.

19                  MR. GROSSMAN:   All right.   Cross-examination.

20                                   CROSS-EXAMINATION

21                  BY MR. KNOPF:

22                  Q    Thank you.   I wanted to ask a number of questions  
23   regarding the parking situation.

24                  A    Sure.

25                  Q    I'm sorry I got a little bit lost, but where did



1 we end up with the total number of parking spaces you saw  
2 when you were finished talking about Exhibit, what's the  
3 exhibit on the board now?

4 A 48.

5 Q 48. I think, let me go through and see if I  
6 understand this. Am I correct that each of the 25 market  
7 rate proposed units have two-car garages?

8 A Yes, that's correct.

9 Q Okay. So that would be a total of 50 spaces, two  
10 times 25?

11 A Correct.

12 Q Okay. Now, what is the width of the garage, when  
13 you say there's two?

14 A Well, the units aren't fully designed, but the  
15 units are proposed at 24 feet wide, and the garage would be  
16 20 feet wide by 20 feet deep. But again, it's not fully  
17 designed. But the spaces inside would be more than adequate  
18 to meet the County standard for size requirements.

19 Q The County standard is what, eight and a half by  
20 19?

21 A Correct, 18.

22 Q Eight and a half by 18. Okay. That's then  
23 assuming there is nothing else in the garage so when you  
24 open the doors, if there are two cars in there, if somebody  
25 is storing anything in the garage, you are going to be able

1 to get the doors open?

2 A Again, the dimensions are eight and a half by 18.

3 And so, you know, there is some additional space in the  
4 typical dimension of the garage that will create, and we do  
5 provide in our homeowner documents to prevent people from  
6 storing items. But people do have trash cans. They have  
7 other things that they keep in their garages, but we still  
8 meet the requirements.

9 Q And then the drive way, you said there could be  
10 two cars parked on the driveway, but they might not meet  
11 exactly the County standards, is that right?

12 A Again, we're not counting any of the driveway  
13 spaces, but in a practical sense, the driveway width, a  
14 typical garage door is typically 15 feet wide, the door  
15 itself, the opening. That's what is, we typically do. And  
16 sometimes they are 16 feet wide.

17 But you typically have an overhang of a foot or so  
18 on each side of the driveway, of the actual driveway itself  
19 coming down. So the driveway may be, you know, 17 feet wide  
20 of paved area coming down to the apron.

21 Q Typically? Okay. So 18 feet wide. Now, okay.  
22 So you're saying you could get -- I'm sorry, and then what  
23 is the length of the driveway?

24 A Well, the length varies, that's why we're showing  
25 both compacts and standards. We're also suggesting that you

1     could, which we typically do, is recess the garage door into  
2     the footprint of the house by two feet. So therefore you'd  
3     start at the garage door where you could park a car all the  
4     way to the edge of the roadway.

5             And in all the situations where we're showing the  
6     blue cars in the driveways, that would be a minimum of 18  
7     feet from the face of the driveway, face of the garage door  
8     to the roadway itself. And in the case of the red cars that  
9     are shown on Exhibit 48, those would be compact spaces where  
10    the length would only be 16 and a half feet.

11            MR. GROSSMAN: Is that permitted to park on a  
12    driveway with your, even if the entire car fits on the  
13    driveway, right to the street, as you are suggesting? Is  
14    that permitted?

15            THE WITNESS: I believe it is. Yes. We're not  
16    overhanging the sidewalk. We're not overhanging into the  
17    drive isle. We're totally outside of the 20 foot drive  
18    isle.

19            BY MR. KNOPF:

20            Q     That's what I wanted to ask because it becomes --  
21    I thought there was something labeled here, Exhibit 48, that  
22    said sidewalk. And I see cars hanging over the sidewalk.  
23    Is that allowed in the code?

24            A     I think I testified earlier that there is no  
25    sidewalk, that that pavement area is basically a decorative

1 payment that's really driveway apron in almost the entire  
2 frontage of every single unit. And so that decorative  
3 pavement is really the driveway apron. It's not considered  
4 a sidewalk.

5 Q So am I correct, there's no sidewalks in this  
6 development?

7 A That's correct.

8 Q Well, I suggest the exhibit should be modified to  
9 set for a sidewalk. Maybe a different term should be used.

10 MR. GROSSMAN: What does it say now?

11 MR. KNOPF: I says four foot sidewalk, labeled in  
12 the checkered part.

13 MR. GROSSMAN: I don't have that exhibit before  
14 me. I guess we could look on the STP. It does say four  
15 foot sidewalk on the STP.

16 MS. BAR: Yes.

17 THE WITNESS: Again, it's not intended to be a  
18 sidewalk, because it's basically 100 percent driveway  
19 aprons. So you really, you don't have sidewalks, typically,  
20 in driveway aprons. I mean --

21 MS. BAR: We can clean that up --

22 THE WITNESS: We'll fix that.

23 MS. BAR: -- because it's confusing.

24 MR. GROSSMAN: Okay. Yes, that would be  
25 confusing.

1 BY MR. KNOPF:

2 Q Then the question, I'm just looking at 48?

3 A 48.

4 Q There's no little car, so to speak, on 23 and 22.

5 A That's correct.

6 Q Where do the cars -- so you can't count two  
7 parking spaces in front of you, so the two spaces in front  
8 of those houses, where do those -- so each of those, 23 and  
9 22 would only have two car garage parking spaces and no  
10 spaces for parking on the driveway?

11 A 22 would have two spaces in their garage.

12 Q Right.

13 A 23 would only have one space in their garage.

14 Q That's an MPDU. I'm sorry.

15 A And those additional spaces would use, adjacent to  
16 that, the visitor spaces. There are six visitor spaces  
17 adjacent to lot 22.

18 Q So, if we have 25 market units times two, and then  
19 if we're counting the driveways we would have 24 with one  
20 approved parking space? Because number 22 I assume is not  
21 going to be a market priced unit?

22 A Correct.

23 Q There is no driveway there.

24 A Correct.

25 Q So we 25 market units, and each one has a driveway

1   that could park one, at least County code requirements, one  
2   car, except for 22, except for a lot, so we're down to 24  
3   market rate units that have one parking space that meets  
4   code requirements and you're saying another one that doesn't  
5   meet code requirements, but that might be accommodated, if  
6   necessary.

7           A     Technically you could have one space that was, you  
8   know, eight and a half feet wide, and another one that would  
9   be seven feet wide, or seven and a half feet wide. We're  
10  just not counting them. We're just saying --

11          Q     Right.

12          A     -- that they are there in a practical sense.

13          Q     Okay.

14          A     Every one of these units, except for lot 22, would  
15  then be able to park two additional cars for guests.

16               MR. GROSSMAN: Just out of curiosity, why not  
17  count it as legitimate spaces, if you say the driveway can  
18  hold at least one full size space? Would that not be  
19  counted as an official space? Because you would have room.  
20  It's not one that would block the entire garage. You'd  
21  have room to get the cars out without moving the space on  
22  the driveway, wouldn't you, or at least one of them, one car  
23  out?

24               THE WITNESS: Why not count them? Again you know,  
25  it's an illustrative plan at this point, and we were meeting

1 the code, and so we counted, what we typically do is count  
2 what we need to, to meet the code.

3 MR. GROSSMAN: I wonder whether staff would count  
4 them under these circumstances, if they were claimed as  
5 spaces.

6 THE WITNESS: We have, I mean, in other  
7 situations, you know, used tandem parking as official  
8 parking counts, and we have counted them. So the staff, I  
9 think, would count them if they were required to be counted.

10 MR. GROSSMAN: I'm sorry. I interrupted.

11 BY MR. KNOPF:

12 Q The, what I'll call the nonstandard parking, the  
13 one that doesn't meet the code, that you would say could  
14 accommodate a compact car, or could accommodate a standard  
15 car?

16 A You know, it's, you start to get into definitions  
17 of compact. I think of when I go to the rental car agency,  
18 and I rent a full size car.

19 Q Right.

20 A A full size car fits in a compact space nowadays.  
21 So, you know, again, except for the big Suburban, there  
22 aren't many cars that actually require the full size spaces.  
23 I personally have a Lexus truck that, unfortunately I do  
24 sometimes squeeze even into a compact space in situations.  
25 so it's hard to determine what's really compact and what's

1 full size.

2 Q Well, let me just ask, what -- give us a range of  
3 what you think these townhouses may sell for at the market  
4 rate? Just a rough range.

5 A We haven't determined a sale price but, you know,  
6 we're hopeful they are somewhere in the \$900,000 price point  
7 range.

8 Q Right. So in your experience, because you've  
9 built other units, is your experience the people that live  
10 in those type of houses tend to have compact cars, or do  
11 they tend to have two large cars?

12 A Well, again, I think they have probably I would  
13 say luxury cars. A luxury car doesn't necessarily mean that  
14 it's a compact or a full size. You know, most Mercedes  
15 convertibles or Mercedes today might, I don't know if you'd  
16 consider that a compact or a full size car, but I know it  
17 can fit in a compact space, or you know, a BMW or whatever  
18 you think is consistent with that price point, I mean, I  
19 don't want to necessarily determine, you know, I don't  
20 evaluate what people drive relative to what they can afford  
21 in the home price.

22 Q Well, let me just, okay, let me just see if I can  
23 tally up now. We have 25 units with two in the garage.  
24 That would equal 50?

25 A Yes.



1           Q     Okay. We have five MPDU's. We have one in the  
2 garage, so that's five, and I think you said four could now  
3 be accommodating one in the driveway?

4           A     Correct.

5           Q     Okay. So that's four in the driveway. And then  
6 you, I thought 25 of the market rate units, you'd have at  
7 least one that meets the County parking requirements?

8           A     24, I believe.

9           Q     24. Yes. That's true. I'm sorry, 24. Okay. So  
10 I'm adding that up to 55, 59, 84, if my math is correct,  
11 which it can't be. 83.

12          A     Plus the eight spaces on the surface.

13          Q     Would there be any reason why we can't put in as a  
14 binding element that you will have at least that many  
15 spaces?

16               MR. GROSSMAN: Well, I think as he testified, you  
17 have a problem just because the staff, at least, hadn't  
18 recognized them as being, those spaces on the driveway.

19               MR. KNOPF: No, I'm only counting one on the  
20 driveway. I haven't --

21               MR. GROSSMAN: No, I know, you've been using the  
22 one, but it hasn't -- staff has seen the STP. They also  
23 seemed to mark sidewalk, so I'm not sure whether they would,  
24 how they're going to count them. So I was going to suggest  
25 a general note that says that, but I mean -- as opposed to a

1 binding element. But I don't know. I mean --

2 MR. KNOPF: I was just trying to get at what, that  
3 this is going to the Council, and I don't think anybody has  
4 any idea of what the number of parking spaces is going to  
5 be. They are parking the visitors. I'm not even sure how  
6 many we have totally taking away the visitors. But let me  
7 ask another question.

8 BY MR. KNOPF:

9 Q Have you explored putting parking -- let me  
10 rephrase that. Down in the northern portion along Little  
11 Falls you have six parking spaces, one of which is  
12 handicapped, correct?

13 A Correct.

14 Q And there's a large open space area beyond that.  
15 Is that for storm water management?

16 A Yes.

17 Q And is there, have you explored the possibility of  
18 putting storm water management underground and putting the  
19 parking on top?

20 A Again, we have, you know, there are, you know, at  
21 time of site plan and preliminary plan, all the details are  
22 evaluated with regard to these uses. And in today's, I  
23 think there were other people who testified about using the  
24 latest storm water management techniques.

25 You know, the County doesn't like 100 percent

1 underground storm water management and in accord with the  
2 new regs, they require best practices to, you know, meet  
3 surface and other, I forget the exact terminology in today's  
4 storm water requirements, but we'll continue to look at  
5 opportunities to try to provide, you know, more service  
6 spaces. But we felt comfortable, not only from a market  
7 standpoint, from a design standpoint, that this was the  
8 right moment.

9 Q Okay. Would you agree with me that if somebody  
10 were having a party and needed extra parking spaces, and  
11 they borrowed a neighbor's driveway, that that would  
12 preclude the neighbor from getting their cars, if their cars  
13 would be in the garage they couldn't get out, if somebody  
14 else was parked in the driveway?

15 A You know, again, it's possible that you could park  
16 one car in a neighbor's driveway, and they would still be  
17 able to get in and out of their garage, potentially. You  
18 know, my parents live in a condominium at the Grosvenor  
19 Metro, and you know, because of the nature of these buyers  
20 that are empty nesters, some of them do travel.

21 They're not always -- you know, they buy these  
22 houses because they have a place in Florida, too. And there  
23 are many times where, you know, they'll ask their neighbor  
24 if they can park cars in their neighbor's garage spots, you  
25 know, inside the garage.

1                   So, I mean, I think people do work together to  
2   accommodate situations, you know, like that. So no, I'm not  
3   totally concerned that if you wanted to park in a neighbor's  
4   driveway, they would totally prohibit somebody from using  
5   their home or whatever.

6           Q     Now, you mentioned there was valet parking, and  
7   you put an exhibit in that if somebody had a large party or  
8   something, that may be an alternative.

9           A     Right.

10          Q     Is it your experience that people use valet  
11   parking if they just have a small group, three or four  
12   people? Isn't it really for a large --

13          A     Sure. It's definitely for large events. And I  
14   thought that was really the concern of the community --

15          Q     No, I think --

16          A     -- as one of them was the large birthday party,  
17   the large event where these people park.

18          Q     Her testimony was small dinner parties or birthday  
19   parties, 10, or a barbeque for 10.

20          A     Right.

21          Q     Do you consider that a large affair?

22          A     Well, you know, again, you know, in the birthday  
23   party for 10, I assume you're --

24          Q     Excuse me. Yes.

25          A     I assume are you including the people that live

1     there in that 10? I just want to understand.

2           Q     No, 10 people who drove.

3           A     10 people who drove, and they're all driving  
4     single occupancy vehicles? I mean, I want to understand the  
5     assumptions.

6           Q     They're, well, 20 couples, 10 people, 10 cars,  
7     excuse me.

8           A     20 couples. See that --

9           Q     20, 10 cars, whether they're couples or singles,  
10    it could be any count. It could be the son, the college  
11    age son is having a party with 10. None of them are  
12    married. I don't care.

13          A     Right.

14          Q     Wouldn't you agree that in terms of, this sounds  
15    like there are a lot of spaces when you multiple 25 times  
16    two and so on. As a practical matter, the availability of  
17    spaces for any individual house, is basically limited to  
18    possibly four, two in the garage and two that can squeeze in  
19    the driveway, and then they have to go off site, I mean, off  
20    the property.

21          A     Well, no. There's actually eight surface spaces  
22    on the property that they could park in first.

23          Q     One of those is the handicapped?

24          A     One is potentially a handicapped, right.

25          Q     So you have seven spaces for non-handicapped

1 people?

2 A Seven spaces. Right.

3 Q And in your opinion is that sufficient for a  
4 development of this size?

5 A Again, I wasn't qualified as an expert, so from an  
6 opinion standpoint, I can't give you my expert opinion. But  
7 from a practical standpoint, I do believe it's sufficient.  
8 And obviously, you know, we are the ones who are taking the  
9 significant risk of buying this property and marketing these  
10 units. And so therefore, they have to be marketable.

11 And people do evaluate parking when they are  
12 making a buying decision, whether it be for an MPDU or for a  
13 \$900,000 plus townhouse.

14 MR. GROSSMAN: I mean, Ms. McDonald testified that  
15 she would have considered it sufficient to have 15 spaces  
16 plus the two per house that were being specified here.

17 MR. KNOPF: No. She was relying on me to put in  
18 the refining language for the binding element that we had in  
19 mind before this was over. And one of the proposals was 15  
20 spaces as a binding element, plus any additional the  
21 Planning Board might add at site plan, but a minimum of 15.

22 MR. GROSSMAN: Right. But what this witness is  
23 suggesting is that he would have an additional, not just 15,  
24 but if, in fact, you just counted one extra on each of the  
25 24 units, you have 24 additional spaces, plus the eight. So

1 32 additional spaces.

2 MR. KNOPF: No, here testimony was based on two  
3 cars in the garage and two cars on the driveway.

4 MR. GROSSMAN: I don't think so.

5 MR. KNOPF: Yes.

6 MR. GROSSMAN: That had not come out yet.

7 MR. KNOPF: But that's what she testified to, that  
8 she deducted -- well, let's go through this.

9 MR. GROSSMAN: The only thing that was on the  
10 schematic development plan was that there were going to be  
11 two cars per regular priced unit, market rate unit, and one  
12 for each MPDU.

13 MR. KNOPF: Right but in the --

14 MR. GROSSMAN: So that was what her, I would  
15 assume that the testimony was based on that.

16 MR. KNOPF: No, because we talked to the  
17 applicant and they had told us two parking spaces on the  
18 driveway. That's what we were told. So if we take, if you  
19 recall her example, she said five, if there were five dinner  
20 parties one night, I think she said of, what was it four  
21 people, that would be 20 cars.

22 MR. GROSSMAN: Right.

23 MR. KNOPF: And the -- there was five --

24 MR. GROSSMAN: No, if there were 20 cars, you  
25 would have 15 spaces for guests. Then you would have five

1 spaces because you have five dinner parties, or whatever,  
2 and then you have the five extra spaces.

3 MR. KNOPF: I forgot her example. I'll get her  
4 testimony, but she was working on four, groups of taking  
5 four. If you take three barbeques at a total of 30 cars,  
6 three different houses, you subtract, that's 30 cars. You  
7 subtract four per house, if we're counting two in the garage  
8 and two out, so that's 12, you have the 30, that leaves 18  
9 spaces that you need. She was subtracting. She was  
10 subtracting the four.

11 So, I mean, it's -- you can do math and you can  
12 come up with all different scenarios, but you did not use, I  
13 know we did not -- the coordinating committee isn't asking  
14 that you prepare for some huge party and an occasion my  
15 happen. We're just trying to satisfy, perhaps, the every  
16 day, every weekend in the making.

17 MR. GROSSMAN: Well, I think it's a legitimate  
18 concern. I'm not sure it's not addressed by the evidence  
19 that there is room for an additional car, and possibly two  
20 on each of those driveways.

21 MR. KNOPF: But that means, if someone has 10  
22 people over to their house, 10 cars, they can accommodate  
23 four. And that means six that are looking for. And you  
24 have two people with 10, they are already up to 12 that  
25 they're missing, 12 spaces. Did I lose you? I may have.



1 MR. GROSSMAN: No, no.

2 MR. KNOPF: There are twoi houses.

3 MR. GROSSMAN: Right.

4 MR. KNOPF: And they each had, say, 10 cars coming  
5 to visit. Each house can accommodate four. Let's assume,  
6 I'm sorry, each house can accommodate two, explain two,  
7 because the two owners have two in their garage. So they  
8 can put two in their driveway.

9 MR. GROSSMAN: So how would you modify visitor  
10 parking to accommodate what you say your clients require?

11 MR. KNOPF: What we were proposing was that, as a  
12 binding element, we took a very low number. They could it  
13 to 15. As a binding element now, with the understanding  
14 that this will be reviewed at site plan and it could have  
15 more, because we let the planners take a closer look. But  
16 we certainly got 15.

17 MR. GROSSMAN: Where do they put them? Where did  
18 they put them on the site plan?

19 MR. KNOPF: Well, if they can't put it over the  
20 storm water management facility, maybe they have to get rid  
21 of a unit. I mean, as a Planning Board member said, we may  
22 not be able to fit 30 units on this site. It's not, you  
23 know, that's the maximum number of units. They don't get  
24 guaranteed. We're trying to work with them to save the  
25 maximum number of units because we appreciate very much

1 their cooperation and their efforts on cleaning up the  
2 environment, and so on. But we're not prepared to trade  
3 that for something that is not good planning for the  
4 residents or would have an adverse impact on the adjacent  
5 community.

6 MR. GROSSMAN: All right. And so what you're  
7 interest in is a binding element that says they'll have at  
8 least 15 --

9 MR. KNOPF: Visitor parking.

10 MR. GROSSMAN: -- visitor parking.

11 MR. KNOPF: On site, as compared to down the road  
12 or some other place.

13 MR. GROSSMAN: Right.

14 MR. KNOPF: With the understanding that that's the  
15 minimum there will be. And then that would be, when you've  
16 got the minimum, that could, clearly the Planning Board at  
17 site plan could add more.

18 MR. GROSSMAN: Ms. Bar, what do you think about  
19 that?

20 MS. BAR: Well, I am, obviously I didn't plan the  
21 site, but, and so my client can address it specifically, but  
22 I don't think we're willing to commit to a binding element  
23 of 15 at this juncture.

24 I think as you yourself have expressed, this is,  
25 should be done and as the Planning Board ultimately stated,

1   there was a discussion of the possibility of there being a  
2   binding element with the referenced parking at the Planning  
3   Board hearing.

4                   And at the end of the discussion the Planning  
5   Board said, it's premature. We don't even know how many  
6   units are going to be approved at this juncture. This is  
7   not the final detailed plan. It's more appropriate to  
8   address this at site plan. And we --

9                   MR. GROSSMAN: Well, yes, when you were arriving  
10   at the final number of parking spaces, but I don't know that  
11   it's premature to say that a minimum number of spaces, guest  
12   spaces. I mean --

13                  MS. BAR: And we've agreed, we will agree to a  
14   minimum number of eight spaces, which are those that are  
15   shown. But it is too early in the design process to commit  
16   to 15. And there are too many unknowns, you know, in terms  
17   of the storm water management, you know, the final unit  
18   count. There are too many variables to agree to 15 at this  
19   point.

20                  We understand that, you know, as we go further in  
21   the process at the site time of preliminary site plan, we  
22   will have to, obviously, have final numbers. But we think  
23   at this juncture committing to the numbers that we have  
24   committed to, which are a total now of 65, and we can  
25   clarify that some more, because I agree that the testimony

1 is a little confusing. We've, the binding element now says  
2 63. But we are going to -- we will increase that to 65.  
3 And those will be comprised of including eight guest spaces,  
4 I think is, was what we came to.

5 THE WITNESS: Yes. I believe the binding element  
6 actually is only the 25 time two and the five times one, at  
7 this stage.

8 MR. KNOPF: This is correct. It does not list any  
9 visitors parking at all.

10 MS. BAR: But we would agree to that change, but  
11 not to 15.

12 MR. GROSSMAN: What about that? They're willing  
13 to add to their binding element that they are going to have  
14 at least eight visitor spaces, and perhaps they'd add on  
15 that they would proposed have 15 visitor spaces, subject to  
16 site plan review.

17 MR. KNOPF: I don't think --

18 MR. GROSSMAN: Well, I'm asking. I'm asking.

19 THE WITNESS: No. The second part of that we're  
20 not willing to do, and aa far as proposing. And again, I  
21 just, I mean, I appreciate, you know, where Mr. Knopf is  
22 coming from. Everybody wants this to function property and  
23 have sufficient parking. You know, it's a question of, you  
24 know, judgment in many cases, you know, what is the right  
25 number of parking spaces.

1           And all of these projects, there is a tremendous  
2 amount of competing, you know, requests. I mean, Parks  
3 wanted their half million dollars to improve the stream and  
4 the park for the easement, well more than the value of the  
5 property.

6           Mr. Knopf wanted 4500 square feet of dedicated  
7 landscape easement area to offset the easement. And so --  
8 and the County wanted an additional MPDU. So here, you  
9 know, we want to reduce the number of market rate units, but  
10 the reality is, this is a very difficult site to be able to  
11 redevelop. It has tremendous amounts of extraordinary costs  
12 in terms of the demolition of what's there today.

13           And, you know, you can only squeeze the envelope  
14 in so many places. and I think in this particular situation  
15 in our experience we think we've made the best judgment of  
16 trying to balance everything that's come together, and do  
17 believe that the parking, in all of our experience, is  
18 sufficient to meet the requirements of the market place, and  
19 to function properly and do believe that the Butler Road  
20 additional parking spaces are within a reasonable walk to  
21 provide some overflow parking, evenings and weekdays and  
22 weekends.

23           And in the experience of, you know, very large  
24 events somebody may have to go out and hire a valet parker  
25 to solve a very large party event on site.

1           So I think we're comfortable with the binding  
2 element as it exists today. We're willing to add the  
3 specificity of the additional service spaces that are shown.  
4 But I don't think we are willing, at this stage, to go  
5 beyond that.

6           MR. GROSSMAN: All right. Mr. Youngentob says  
7 you're squeezing his envelope. What do you say?

8           MR. KNOPF: And I apologize for squeezing the  
9 envelope, but I don't think the, I don't think that it is  
10 sacred when they want to have 30 units, if that's the only  
11 say that you can make a decent project is to have maybe one  
12 less unit. I'm trying --

13          MR. GROSSMAN: Well, it may be.

14          MR. KNOPF: -- that would be the last --

15          MR. GROSSMAN: The site plan may determine that  
16 there is not enough parking. But he's saying he's not  
17 willing -- he's willing to put in the binding element that  
18 you have at least eight visitor spots, plus the additional  
19 ones that he's identified now. But he's not willing to say  
20 that he's going to propose more because it may result in the  
21 reduction of the unit.

22          MR. KNOPF: Well, all I can say is that based upon  
23 my instructions from the full Coordinating Committee, not  
24 necessarily the vice chair, the vote was very clear that  
25 they had to do something about the parking or it would

1 greatly adversely impact the park land. And the Coordinating  
2 Committee was not prepared to put up with that. They didn't  
3 think it would defeat the project, because they felt there  
4 were some ways that they're -- they're very adapt and very  
5 intelligent about rearranging things. They hoped they could  
6 rearrange and save the units and still have additional  
7 parking.

8               But they do not believe that the Butler is a  
9 viable alternative as a realistic approach to this. And I  
10 can ask them a question about that to explain that. But we  
11 want them to at least -- 15 was a really low number,  
12 everybody thought. But we were willing to do that, because  
13 we were trying to cooperate. I mean, basically, we think  
14 more should be there, but we thought we'd leave it to Park  
15 and Planning, let them examine it more.

16              They have, there is data from other townhouse  
17 developments, and so on, as to what the situation is in  
18 terms of providing parking, and whether people have  
19 complained and so on. We don't have that data, and I know  
20 you want evidence. But I would appreciate if they have the  
21 data, they should put it in. If they have other  
22 developments that say they can get away with just this  
23 minimal number of parking and nobody is complaining there's  
24 not a problem.

25              MR. GROSSMAN: Do you have data?

1                   MS. BAR: We, I don't know if we have it available  
2 today. We have --

3                   THE WITNESS: We have collected data on Metro-  
4 oriented developments where it's evident that not everybody  
5 owns two cars. I don't have data that, in this particular  
6 case, would suggest that, you know, either this is an  
7 insufficient or a sufficient, in terms of specific data we  
8 have, you know, anecdotal evidence of having completed, you  
9 know, 30 plus communities.

10                   And all situations are different. I mean, there  
11 are some places where, you know, there is insufficient  
12 street parking in a neighborhood that's, you know, a grid  
13 like street because all the surrounding property owners  
14 don't have any garage or off street parking. And so the  
15 luxury of having off street parking in these units tends to  
16 solve the majority of the parking concerns.

17                   You know, we're all sitting here speculating about  
18 the typical party scenario on a Friday or Saturday night.  
19 And it's very difficult to predict that. Our judgment is  
20 that there is sufficient parking here, and that, you know,  
21 is exposure to us from a market standpoint. And I recognize  
22 that, you know, we may not agree on all issues, but we do  
23 believe there is sufficient parking, and we do believe that  
24 the additional driveway spaces provides the right number to  
25 make this project successful.



1           MS. BAR:   And I would just suggest something else  
2   as a practical matter in terms of the parking along Little  
3   Falls Parkway, which is the concern.   I mean, the community  
4   is concerned that that's where the overflow will go.

5           We have agreed to signage, and we have to get  
6   permission, but we anticipate that there will be signage.  
7   And to some extent, the community are the best policers of  
8   enforcing such signage.   And everyone knows that, I mean,  
9   I'm aware of where my health club is, where parking is  
10   enforced, and it gets, it's known very quickly that they are  
11   going to enforce parking regulations.

12           And that word from an owner to its guests will get  
13   out, that do not park along Little Falls Parkway because you  
14   will be towed.   So I don't think that that's an irrelevant  
15   consideration here.   And, I mean, I think the main testimony  
16   is that we have more than sufficient parking.   But that is  
17   the concern that the community has.   And we don't even think  
18   that concern cannot be addressed.

19           MR. GROSSMAN:   Okay.   I think I understand the  
20   various positions.   In the end, you can decide whether or  
21   not you're going to not recommend approval or you're going  
22   to oppose approval as a result of that or not.   But in any  
23   event, any other questions for this witness?

24           BY MR. KNOPF:

25           Q       Just one question.   Is Butler Road a publically

1 maintained road?

2 A Portions of Butler Road are publically maintained.

3 Q Portions?

4 A Yes, the majority portion from River Road,

5 basically, down to, I'll refer to Exhibit 40, I guess --

6 this one has been introduced, Exhibit 40. So Butler Road,

7 basically from River Road all the way down to this point.

8 I'll point to --

9 MR. GROSSMAN: The northern end of your site, in  
10 effect, or close to it?

11 THE WITNESS: Well, it's a little bit beyond the  
12 northern end of our site because the portion from the  
13 northern end of our site to the actual publically dedicated  
14 portion of Butler on a scale of 50, it looks like it's  
15 probably about 60 to 70 feet. It is actually under it, that  
16 last section that exists. So the remaining portion of  
17 Butler Road is publically maintained.

18 MR. GROSSMAN: Since you mentioned publically  
19 dedicated, are you planning any specific amount of dedicated  
20 land here as part of this project?

21 THE WITNESS: No. All the roads on our site will  
22 be private.

23 MR. GROSSMAN: Are you finished, Mr. Knopf.

24 MR. KNOPF: Yes, I am.

25 MR. GROSSMAN: All right. Mr. Humphrey, do you

1 have any questions?

2 MR. HUMPHREY: I do just regarding this last line  
3 of inquiry.

4 BY MR. HUMPHREY:

5 Q Is that the boundary line of the adjacent property  
6 at the terminus of Butler Road. Is that where the public --

7 A I believe it is. Yes.

8 Q Public maintenance ends there?

9 A Yes.

10 Q Thank you very much.

11 MR. GROSSMAN: Any redirect?

12 MS. BAR: I think we've done everything. Thank  
13 you.

14 MR. GROSSMAN: Thank you very much. All right.  
15 Your next witness? You can stay there if you want and just,  
16 next to Ms. Bar there is another chair.

17 MR. KNOPF: Before, I gather, we have one witness  
18 that would be what, five minutes or less? Less than five  
19 minutes, and she has to leave if she could --

20 MR. GROSSMAN: Sure. The more the merrier.

21 MR. KNOPF: We appreciate it. Thank you very  
22 much.

23 MS. DUNNER: Thank you very much.

24 MR. GROSSMAN: You're very welcome. Would you  
25 state your full name, please, and address?

1                   MS. DUNNER:  Yes, it's Jenny Sue Dunner, and I  
2   live at 5315 Dorset Avenue, Chevy Chase.

3                   MR. GROSSMAN:  D-U-N-N-E-R, as I recall?

4                   MS. DUNNER:  Correct.

5                   MR. GROSSMAN:  All right.  Would you raise your  
6   right hand, please?

7                   (Witness sworn.)

8                   MR. GROSSMAN:  All right.  You may proceed.

9                   STATEMENT OF JENNY SUE DUNNER

10                  THE WITNESS:  Thank you.  May I say just two  
11   things prior to my testimony?

12                  MR. GROSSMAN:  Sure.

13                  THE WITNESS:  One, I wanted to tell you that  
14   Ernie's is on the other side of the Capital Crescent Trail  
15   as you go down the road past McDonald's.

16                  MR. GROSSMAN:  Okay.

17                  THE WITNESS:  And I don't know if Ernie's is still  
18   there, but they do have two auto body shops.  And I'm sure  
19   the sign is still there, because I used to go there all the  
20   time.

21                  MR. GROSSMAN:  I haven't been there in probably 30  
22   years.

23                  THE WITNESS:  Okay.  Well, I'm always going down  
24   there and kind of checking the area.  And the other thing I  
25   wanted to mention, I don't know if anyone has a copy of the

1 Westbard plan, but if I'm not mistaken, the only -- if I can  
2 find it after a minute -- the only public road on River Road  
3 is Landy Lane. The others are all privately maintained. In  
4 other words, the only quote, County road, is Landy Lane. I  
5 think I'm correct on that. It's in the -- anyway, unless  
6 they've changed it. I think it's in this book.

7 MR. GROSSMAN: Testimony --

8 THE WITNESS: I just wanted to correct that.

9 MR. GROSSMAN: All right. Does it make a  
10 difference, by the way?

11 THE WITNESS: I mean I might be incorrect.

12 MR. GROSSMAN: I'm not sure why. Does that make a  
13 difference here?

14 THE WITNESS: No, but I just like to make things  
15 correct.

16 MR. GROSSMAN: No, no, that's fine. I just wanted  
17 to know if it was something that I had to --

18 MR. KNOPF: It does make a difference.

19 THE WITNESS: It's called housekeeping.

20 MR. KNOPF: It makes a difference as to who may  
21 park on the road, general public or just the people that  
22 maintain the road, the private enterprises all along that  
23 road if they maintain it. They just use it for their  
24 employee parking and customer parking.

25 MR. GROSSMAN: I think that his point was that at

1 the time when there might be demand from the new community  
2 for the development, for that parking, it would not be when  
3 the businesses were operating, and so they could actually  
4 find parking spaces there. I wasn't looking to Butler Road  
5 as a place for parking spaces for the subject site, but I  
6 understand the point, and there is a point.

7 MR. KNOPF: Well, I think that Ms. McDonald  
8 mentioned that she found it was crowded at night. And we  
9 already heard testimony from, I forgot, somebody, that the  
10 Kenwood Condominium sends their extra parking over there,  
11 that's across the street. It's a tight parking situation.

12 MR. GROSSMAN: Yes, I am sure it is. And that  
13 really wasn't what I was considering as the parking space  
14 for that.

15 MR. KNOPF: It's not ideal.

16 MR. GROSSMAN: All right, ma'am.

17 THE WITNESS: I'm here to testify today on behalf  
18 of the coalition for the Capital Crescent Trail Board. And  
19 I'd like to take just a minute to tell you a little bit  
20 about the trail board.

21 It was organized in 1986 to monitor the trail that  
22 goes from Georgetown to Silver Spring. As you perhaps know,  
23 the trail is a shared use trail, and the mission for our  
24 board regarding the trail is not only to protect it and  
25 maintain it and develop it to a really, truly, and maintain

1 a first class trail.

2           We do many things, have many goals regarding the  
3 trail board. We do everything from the invasive weed  
4 projects, graffiti in the Bethesda tunnel. We have  
5 contributed \$40,000 to the Bethesda tunnel regarding  
6 lighting, et cetera. We work with communities to develop  
7 access roads from the community to the Capital Crescent  
8 Trail. We have given \$75,000 to an observation landing of  
9 the trestle that goes over Rock Creek Park. We do bells and  
10 whistles. And of course, one of the ongoing projects --

11           MR. GROSSMAN: What do you mean, you do bells and  
12 -- what does that mean?

13           THE WITNESS: Well, I don't do it so well, but on  
14 the trail, on a Saturday, you will often see, if you are on  
15 the trail, you will see volunteers from the Capital Crescent  
16 Trail membership providing bells and whistles to people who  
17 need to put them on their bikes, so that they can alert  
18 people who are walking.

19           So we pass those out. We've passed out thousands  
20 of bells and whistles. We do that a lot when it's -- not in  
21 100 degree weather, but when it's a little nicer. But, of  
22 course, and that really gets to one of the greatest  
23 priorities of the trail board, is safety on the trail, as  
24 you can perhaps understand.

25           The trail has over 1 million users a year, and as

1 a result, it can get very crowded with walkers and bikers  
2 and strollers and people walking dogs, and that kind of  
3 thing.

4 MR. GROSSMAN: Right.

5 THE WITNESS: I do want to say right off that we  
6 all, the communities really thank Aakash, who -- I hope I  
7 pronounced that correct.

8 MR. THAKKAR: Aakash.

9 THE WITNESS: Aakash. I'll get it.

10 MR. THAKKAR: Two K's.

11 THE WITNESS: And Mr. Harris.

12 MR. GROSSMAN: The last name is two K's.

13 THE WITNESS: He's very nice, regardless -- for  
14 coming to the community early on and being so cooperative  
15 about reaching out to the community. And particularly the  
16 interest and the cooperation they have given regarding  
17 access to the Capital Crescent Trail.

18 Now, I don't know if today, and if I could, I  
19 don't know if I can stay a few more minutes, if they are  
20 going to even talk about the access point to the trail.

21 MR. GROSSMAN: They did. Their testimony already  
22 included --

23 THE WITNESS: Well, it is a challenging access  
24 point. It is extremely steep. It's going to probably  
25 require, certainly, a landing, because no one is going to be



1   able to go up that high.

2                   And one of the things that came out of the last  
3   board meeting of the board was, at the top, we want to make  
4   sure where it comes out that there will be a landing so it  
5   doesn't just immediately come out onto the trail with bikers  
6   going very quickly. So that all kind of has to be looked  
7   at.

8                   And I'm sure they will continue to cooperate with  
9   us in that respect. And I would also urge that a member of  
10   the trail board be involved, too, when this -- if and when  
11   this process does get going to help monitor the situation.

12                   The other thing I wanted to mention, the last  
13   point is, this all comes at a very interesting time for the  
14   trail board itself, because we have just voted, well,  
15   actually voted a couple of years ago, to spend \$75,000 to  
16   develop a park called the River Road Plaza, which is going  
17   to go over River Road where the bridge is that goes over  
18   River Road. It is on, across from McDonalds, and it is  
19   probably a couple acre site.

20                   Anyway, I'm going to leave this, I don't know if  
21   it's necessary in this proceeding, but at least for your own  
22   interest, a map of what we are trying to do on the River  
23   Road Plaza. Now, we have spent, probably of that \$75,000,  
24   we have spent about, maybe about \$10,000 with engineering,  
25   with a design and so forth, and we are planning to maintain

1 the project by going to the various merchants on River Road  
2 and asking them to participate.

3 We have entered into a private/public partnership  
4 with the Parks Department, and we have gone through all of  
5 the administrative proceedings with them. We are in the  
6 very last point of negotiation since the budget crunch has  
7 come, having to do with the maintenance of this plaza, once  
8 it is developed.

9 So, having said that, and I don't know if this  
10 falls on something you can do, but one of the nice things  
11 about this particular development is that people will not  
12 have to take a car, let's say, and go to Bethesda. They  
13 could go up and go to Barnes and Noble. They could have  
14 lunch. They could take the whole family. And that would  
15 take cars off the road.

16 And we think that falls very nicely into the PAMR  
17 Fund. So we would like to very much to perhaps have some of  
18 the money go towards the Capital Crescent Trail Plaza on  
19 River Road. We figure that a lot of people will be using  
20 that when the weather is nice, and that will just be that  
21 many less cars on that --

22 MR. GROSSMAN: You mean the PAMR contribution that  
23 they would make, you're asking that the money could go to  
24 your organization?

25 THE WITNESS: Well, we're going to be coming to

1    them, no matter what, and saying that we are developing this  
2    plaza, and this is a very, very good time, because it would  
3    wonderful to be able to go to other people along River Road  
4    and say, see, we have X number of dollars from this group,  
5    and it's good publicity.

6                It's certainly going to enhance River Road,  
7    without any doubt. It's going to be a wonderful site for  
8    people to stop and to rest. And we also feel that because  
9    they are really, literally, on top, practically, or down  
10   below the Capital Crescent Trail, it's a wonderful  
11   opportunity to take some of those funds and do some very  
12   good work with it.

13               MR. GROSSMAN: I don't doubt any of that, but it's  
14   not in my bailiwick. I don't have any --

15               THE WITNESS: I figured it wasn't, but you know  
16   what, it never hurts to try.

17               MR. GROSSMAN: Certainly.

18               THE WITNESS: And you just might stick in a  
19   recommendation there. So anyway, that is basically it. And  
20   thank you very much.

21               MR. GROSSMAN: Thank you, ma'am.

22               THE WITNESS: I'll leave these for you.

23               MR. KNOPF: The purpose of what she is saying,  
24   explains the nonbinding element in the binding element --

25               MR. GROSSMAN: I see. I see.

1           MR. KNOPF:  -- because probably the Planning Board  
2   staff report, the hearing examiner may recall, says the PAMR  
3   there, they need to eliminate seven trips or pay --

4           MR. GROSSMAN:  Right, X amount of, per trip.

5           MR. KNOPF:  -- I think \$11,000.  So that creates a  
6   fund of some \$70,000 some.

7           MR. GROSSMAN:  \$70,000, right.

8           MR. KNOPF:  And while you don't have the authority  
9   to direct how that money should be spent, we, at the  
10  community, believes it would be very helpful to have this  
11  nonbinding element, and to help them meet with DOT and the  
12  others to see if they can't have the fund so applied.  And  
13  that is the purpose.

14           And EYA has been kind enough to say that they  
15  would, they support this idea of using, of facilitating  
16  pedestrians on the trial.  And so they would be supportive  
17  of having the funds used that way.  It's obviously a  
18  nonbinding element.  And we're not asking that the hearing  
19  examiner direct it, although we'd like to.  If you can find  
20  the authority, we'd ask you to do that.

21           MR. GROSSMAN:  I understand.  I understand.  It  
22  says, applicant will cooperate.  And that sounds fine to me  
23  as something that they've put in as a nonbinding element.  
24  Did you wish to brutalize this witness with your cross-  
25  examination, Ms. Bar?

1           MS. BAR: No, I like this witness. I agree with  
2 everything that she said. And I was going to just point out  
3 that we do have this nonbinding element, and this is just  
4 another area that EYA in many discussions with the community  
5 has agreed to also work on this.

6           MR. GROSSMAN: All right. And am I supposed to --  
7 is this an exhibit for this case or just for my --

8           THE WITNESS: Well, whatever you think best, of  
9 course, but I just wanted you to see it, in any event. It's  
10 a little hard to understand, I realize. But a lot of crepe  
11 myrtles and a lot of pretty things.

12          MR. GROSSMAN: I'll have to put on my glasses  
13 anyway. Okay. Thank you. Hold on one second. Mr. Knopf,  
14 did you have any questions of this witness, or Mr. Humphrey?

15          MR. HUMPHREY: No.

16          MR. GROSSMAN: Is your bottom line of your  
17 organization that you are supportive of this rezoning  
18 application or not?

19          THE WITNESS: The trail board does not get into  
20 any type of land use, voting that way. The only time that  
21 we ever got involved is when something is close to the trail  
22 where we feel we would like to have input. We do not, we  
23 really follow basically what the community wants to do.

24          The board all along has been aware of this and has  
25 looked with some anticipation on maybe getting some money,

1 and talked about that at the board meetings. But we do not  
2 endorse anything, one way or the other.

3 For example, the lot across from Barnes and Noble  
4 that is going to be developed, we worked for a very, very  
5 long time, because that is right alongside the trail.

6 MR. GROSSMAN: Yes.

7 THE WITNESS: So we had no input as to, you know,  
8 they didn't ask our opinion to much on other aspects of it.  
9 But certainly they have been very interested and supportive  
10 regarding bike racks and how you will have access to the  
11 trail, and with a gate and so on and so forth.

12 MR. GROSSMAN: Right.

13 THE WITNESS: So that's where we really take an  
14 interest and like to participate.

15 MR. GROSSMAN: Okay. Well, thank you very much  
16 for taking your time to come down here today --

17 THE WITNESS: Thank you.

18 MR. GROSSMAN: -- and sharing your views and those  
19 of your organization. All right. Are we ready for  
20 Mr. Landfair?

21 MS. BAR: We are.

22 MR. GROSSMAN: Unfortunately, we used up all his  
23 time already, so he'll have to be very brief.

24 MR. LANDFAIR: And in conclusion --

25 MS. BAR: And we're going to have to start

1 concluding.

2 MR. GROSSMAN: That's a good way to start. I like  
3 that.

4 MS. BAR: We are determined to get finished today.

5 MR. GROSSMAN: Mr. Youngentob used up all your  
6 time.

7 MS. BAR: Yes. At this point I would like to call  
8 Bill Landfair to testify in the field of land planning and  
9 design. And he can go briefly through some preliminaries,  
10 but I --

11 MR. GROSSMAN: Let's get his name and swear him in  
12 first. Your full name, please, and your occupation?

13 MR. LANDFAIR: Bill Landfair, land planner with  
14 VIKA Incorporated.

15 MR. GROSSMAN: All right. Would you raise your  
16 right hand, please?

17 (Witness sworn.)

18 MR. GROSSMAN: Okay. I forget if you submitted  
19 his resume.

20 MS. BAR: Yes.

21 MR. GROSSMAN: Of course, I'm very familiar with  
22 Mr. Landfair. What's the exhibit number?

23 MS. BAR: The exhibit number is -- the prehearing  
24 submission -- it's part of Exhibit 29. I do have an extra  
25 one here today if you want that.

1           MR. GROSSMAN: I just want to make sure it's in  
2 the record. We have it as part of Exhibit 29. Okay.

3           MS. BAR: Here is an extra one if you want to mark  
4 it separately, I do have one.

5           MR. GROSSMAN: I won't mark it separately if it's  
6 in the record somewhere. If you can locate it for me. That  
7 counts as my exercise for the week. While you're looking  
8 for that, any questions of this witness regarding his  
9 qualifications? I presume he's being offered as an expert  
10 in land use planning.

11          MS. BAR: Yes.

12          MR. KNOPF: We accept him as an expert in land use  
13 planning.

14          MR. GROSSMAN: Mr. Humphrey.

15          MR. HUMPHREY: Yes, exactly.

16          MR. GROSSMAN: Yes. Based on Mr. Landfair's long  
17 experience in the field, as well as his having testified as  
18 an expert in that field before me and other hearing  
19 examiners, I accept him as an expert in land use planning.

20          MS. BAR: Well, I found Exhibit 29, and it has, as  
21 part of it --

22          MR. GROSSMAN: It names him, but I didn't see the  
23 exhibit. Okay. We can mark this. Okay. So Exhibit 52 is  
24 the Landfair resume. All right. You may proceed.

25                           (Exhibit No. 52 was



1 marked for identification.)

2 DIRECT EXAMINATION

3 BY MS. BAR:

4 Q Mr. Landfair, you were employed by the applicant  
5 to assist in the land use component of this proceeding.

6 What were you asked to do in connection with this?

7 A I contributed to the preparation of the land use  
8 report, the schematic development plan and other supporting  
9 documents.

10 Q And have you visited the property?

11 A Yes, I have.

12 Q And in these visits, those were for the purpose  
13 of --

14 A To evaluate the existing site conditions, any  
15 issues that might affect the development of the plan, and to  
16 ensure that what we were showing on the plan would be  
17 compatible with the surrounding area.

18 Q At this point, I would like you to describe the  
19 surrounding area and go through the surround area as we  
20 defined it in the land use report, and also the exhibit that  
21 was submitted as Exhibit 40 --

22 A Sure.

23 Q -- which is a slightly different surrounding area.

24 A Right. First, I'll just say that in the original  
25 land use report, we did define the surrounding area slightly

1 differently. Basically, the boundaries were the same, that  
2 is that they were bound by River Road to the north, Westbard  
3 Avenue to the east, Massachusetts Avenue to the south, and  
4 Little Falls Parkway to the east.

5           This area relied upon roadways and the Westbard  
6 sector plan for its demarcation, but upon further  
7 reflection, and recognizing the importance of transitioning  
8 to the single family residential neighborhood further to the  
9 east, we wanted to include a portion of that neighborhood.  
10 So we did, and those boundaries do coincide I think fairly  
11 well with what the Park and Planning staff have defined as  
12 their surrounding area.

13           MR. GROSSMAN: And I have Wheeler Road as the end  
14 of their surrounding area, page five, diagram. You look  
15 like you might go a little further than that, or am I  
16 mistaken? It looks like that's on the southeast end.

17           THE WITNESS: I think we're one block over to the  
18 south.

19           MR. GROSSMAN: Yes, you're to -- yes, southeast or  
20 whatever. Is that Verner Road, is that what that is? It's  
21 hard to read here.

22           THE WITNESS: I'm sorry, it's Field. It's down at  
23 the bottom line, it's --

24           MR. GROSSMAN: Well, they have, they've gone to  
25 Wakefield. Is that how far you've gone there? Or have you

1   gone down one further to the southeast?

2               THE WITNESS:  I'm sorry, I don't see Wakefield.

3               MR. KNOFF:  Wakefield is --

4               MR. GROSSMAN:  One block north of where you are.

5               THE WITNESS:  Oh, I'm sorry, no Wakefield is  
6   consistent with the line that we have.

7               MR. GROSSMAN:  So what's --

8               THE WITNESS:  The same boundary.

9               MR. GROSSMAN:  So where did you -- you went  
10  further to the north.  Is that --

11              THE WITNESS:  No.  We actually go as far north as  
12  they did as well, which is to River Road.

13              MR. GROSSMAN:  I'm sorry, north, is --

14              THE WITNESS:  Our boundary should be shown like  
15  this.

16              MR. GROSSMAN:  Then it's to the west.  Have you  
17  gone further to the west than they do?  It doesn't look  
18  quite the same.

19              THE WITNESS:  It doesn't, it doesn't look quite  
20  the same, no.

21              MR. GROSSMAN:  That's why I --

22              THE WITNESS:  I think perhaps we have -- it looks  
23  like they stopped at Georgetown.

24              MR. GROSSMAN:  Well, I'll tell you what they say  
25  on here.  They say, generally formed by River Road to the

1 north, residential homes on the east side of Falls Parkway  
2 to the east, park land to the south and Westbard Avenue to  
3 the west.

4 THE WITNESS: All right. So they don't delineate  
5 which street. By looking at their exhibit here --

6 MR. GROSSMAN: Right.

7 THE WITNESS: -- which I'll identify in a moment,  
8 it doesn't look like they went quite as far.

9 MR. GROSSMAN: And why did you include the extra  
10 distance then?

11 THE WITNESS: I thought it was just appropriate to  
12 take it that far. I thought, you know, it's within 400-500  
13 feet of the subject property, and I thought that was a  
14 reasonable distance to consider in terms of potential  
15 compatibility, and again, looking at it in terms of our use,  
16 our development transitioning to that neighborhood.

17 MR. GROSSMAN: All right. Well, without  
18 expressing an opinion as to which one is a better  
19 surrounding area definition, do you find theirs acceptable  
20 as well, or is it --

21 THE WITNESS: I do. I don't see a huge  
22 difference, frankly, between the two.

23 MR. GROSSMAN: Okay.

24 THE WITNESS: In describing further the character  
25 of the surrounding area, the area is quite diverse. And

1 looking further to the west, across the Capital Crescent  
2 Trail, where you have the Westbard commercial area, you have  
3 quite a few different types of land uses, a mixture of  
4 retail, office, and residential uses in the C-1, C-0, I-1  
5 and R-10 zones.

6 To the north, of course, along Butler Road, you  
7 have a mixture of industrial and commercial uses in the  
8 I-1 zone. To the east and to the south you have park land,  
9 and of course, further to the east you have the single  
10 family homes in the R-60 zone.

11 And further to the southwest, again across the  
12 Capital Crescent Trail, you have townhouses in the RT-12.5  
13 zone.

14 BY MS. BAR:

15 Q In assisting in the preparation of the schematic  
16 development plan, did you take into account the  
17 compatibility of the proposal with the adjacent  
18 neighborhood, in particular with respect to density?

19 A Yes, we did. I'm now referring to a new exhibit,  
20 which I think has not been entered into the record yet.

21 MR. GROSSMAN: 53.

22 (Exhibit No. 53 was  
23 marked for identification.)

24 MS. BAR: Are we at 53.

25 MR. GROSSMAN: And what is that an exhibit of?

1 THE WITNESS: You said 53?

2 MR. GROSSMAN: 53, yes.

3 THE WITNESS: This exhibit was prepared by Park  
4 and Planning staff, and it is being used with their  
5 permission for this hearing. It's titled, appropriate  
6 density analysis, and it's taken from the Powerpoint  
7 presentation they made to the Planning Board at the Planning  
8 Board hearing.

9 The exhibit describes the surrounding area. It  
10 shows the subject property in red, and then further shows  
11 the approximate density of a number of residential uses  
12 surrounding the subject property.

13 We do believe this site is appropriate for  
14 townhouse development, given its location, and given the  
15 proposed density. The RT-15 zone, if approved, would yield,  
16 could yield a maximum 33 units using a density bonus which  
17 would equal a density of 18 units to the acre. However, as  
18 shown on the schematic development plan, we're proposing 30  
19 townhouses. And this includes, of course, five MPDU's, for  
20 a total density of 16.7 units to the acre.

21 In reviewing the surrounding area, it's a path  
22 that the residential densities transition from the higher  
23 densities further to the west, to the lower single family  
24 densities to the east. The multi-family building, which is  
25 located in Westbard here, has an approximate density of 137

1 dwelling units to the acre. A nearby townhouse community  
2 further to the south has a density of just under 13 dwelling  
3 units to the acre. The single family residential  
4 neighborhood has a density just under five dwelling units to  
5 the acre.

6 We believe that given these surrounding densities,  
7 as well as the proximity of commercial and industrial uses  
8 nearby, that our proposed density of 16.8 dwelling units to  
9 the acre will provide an appropriate transition.

10 MR. GROSSMAN: Well, let me ask you this. Is that  
11 still a third outline of the surrounding area, or is that  
12 the same as your new one?

13 THE WITNESS: You know, in looking at it, the  
14 difference here, I think, is this line here.

15 MR. GROSSMAN: This line here being the southern  
16 end, or the southern --

17 THE WITNESS: Yes. It would be in the southwest  
18 corner. Also, the orientation is different.

19 MR. GROSSMAN: Yes, it was just --

20 MS. BAR: Well, it's denoted as an analysis area  
21 as opposed to the surrounding area.

22 MR. GROSSMAN: Well, usually you use the  
23 surrounding area as the analysis area --

24 MS. BAR: Yes.

25 MR. GROSSMAN: -- so that you have, you know what

1   you're comparing it with. The problem here is that now I  
2   have three different surrounding area definitions, and I'm  
3   not sure what to use as the appropriate area for comparison  
4   of densities. How do you explain, how do I explain that, in  
5   my report to the Council?

6               MR. KNOPF: I don't think that it changes the use.  
7   It's just more of the same use, a bigger area.

8               MS. BAR: Exactly.

9               MR. KNOPF: You're not going into a different use  
10  by cutting it back or going out farther.

11              MR. GROSSMAN: Perhaps. But, I mean, if you are  
12  comparing densities, you have specific things within a given  
13  area at certain densities. And if you change the area, then  
14  you change the density comparison. Anyway, this was  
15  prepared by staff, you say?

16              THE WITNESS: It's prepared by staff, and it's  
17  borrowed with their permission. And I meant to share it  
18  with you here today primarily just to illustrate, again, the  
19  approximate densities of the nearby high rise residential,  
20  nearby town home development, and the nearby single family  
21  homes to the east of Little Falls Parkway.

22              MR. GROSSMAN: And you said your density was 16.8.  
23  I think when I divided it out I came out with 16.6, just  
24  out of curiosity. Did I do the math wrong? That's my  
25  recollection, anyway.



1 THE WITNESS: 16.67.

2 MR. GROSSMAN: Right.

3 THE WITNESS: So that rounds up to 16.7.

4 MR. GROSSMAN: I don't know where the 16.8 comes  
5 from. I saw that somewhere in some figures.

6 THE WITNESS: It's on the staff exhibit, so I  
7 should have corrected myself here in referring to theirs.

8 MS. BAR: You actually did say 16.7.

9 THE WITNESS: Did I?

10 MS. BAR: But then when you referenced the  
11 exhibit, he changed it to 16.8.

12 MR. GROSSMAN: All right.

13 MS. BAR: And I would suggest that all of the  
14 references to the density that Mr. Landfair spoke of, all  
15 are within the defined neighborhoods, or the defined  
16 surrounding area.

17 MR. GROSSMAN: Staff's defined surrounding area,  
18 or his?

19 MS. BAR: And ours. So it's really for that  
20 purpose that this is being used, as opposed to for the  
21 surrounding area definition.

22 MR. GROSSMAN: Okay. All right. It makes it  
23 easier on the hearing examiner if all the, if we know what  
24 the surrounding area definition is, and if all the arrows,  
25 north arrows point up. So after a while my brain just --

1 all right.

2 BY MS. BAR:

3 Q Mr. Landfair, are you familiar with other RT  
4 zoning plans which have been approved in the County for  
5 RT-15? And how would you say that this proposal compares,  
6 in terms of compatibility, with those plans?

7 A There are several that I've taken a look at. Two  
8 that come to mind are zoning cases G-786, otherwise known as  
9 Plyers Mill, and G-798, which was the Good Counsel High  
10 School site in Wheaton.

11 Both cases, the master plan did not recommend a  
12 specific density for the RT zone. Both cases are surrounded  
13 on at least three sides by residential zoning. In the case  
14 of Plyers Mill, you also have some nearby institutional uses  
15 and nearby RT-12.5 townhouse project. In the case of Good  
16 Counsel, you also had some adjacent commercial land uses.

17 Both ended up being rezoned to the RT-15 zone,  
18 approved for 15 units per acre. Both were found to be  
19 compatible with the adjacent single family residential, the  
20 adjacent institutional and commercial.

21 Q There has been a discussion of the binding  
22 elements that were placed on this schematic development plan  
23 in order to even better ensure that the plan is compatible  
24 with the neighborhood. What is your opinion as to the  
25 binding elements in terms of compatibility, enhancing

1 compatibility?

2           A     I was prepared to go through all 12 of them, line  
3 by line. But they have been discussed quite thoroughly  
4 today. So I won't do that. I will just summarize to say  
5 that binding elements generally and specifically in this  
6 case, do contribute to the compatibility of a rezoning, and  
7 that we agree to these binding elements. And we believe  
8 that they will make for a more compatible project.

9           Q     Did you review the Westbard sector plan and the  
10 Montgomery County zoning ordinance and evaluate the proposed  
11 development in light of the recommendations contained in the  
12 master plan, and the requirements of this ordinance?

13          A     Yes, I did. Master plans are land planning  
14 documents which provide guidance for the general development  
15 of the area they address. Specific compliance with  
16 recommendations of the master plan or sector plan is not a  
17 requirement for reclassification to an RT zone.

18                   But in this case, there are specific  
19 recommendations regarding the redevelopment of this  
20 property, redevelopment for town homes. The sector plan  
21 recommended RT-10, but the proposed reclassification of the  
22 property from I-1 to RT-15 is, we believe, more appropriate  
23 in this case.

24          Q     So is it your professional opinion that the  
25 proposed zoning is substantially consistent with the sector

1 plan recommendations?

2           A     We believe it is. The sector plan indicated that,  
3 as I mentioned, the site would be appropriate for  
4 townhouses. We believe that given the site's proximity to  
5 Bethesda, to Friendship Heights, to the changes in land  
6 planning that have taken place since the original approval  
7 of the plan in 1982, we believe that this specific category  
8 of RT-15 is appropriate.

9                     At the time the plan was written, the so called  
10 urban row home on compact sites was not a common building  
11 type, particularly in places like Montgomery County. The  
12 concept of developing more compact and more sustainable  
13 communities in close in locations was not the prevailing  
14 approach.

15                    In fact, the RT-15 zone did not even exist at the  
16 time of the plan's adoption. It was added later in  
17 recognition of the changes in urban design and land use  
18 concepts.

19                    Since the adoption of the sector plan, the  
20 Westbard area has become more urban in character, taking  
21 advantage, again, of the development of transit oriented  
22 urban destinations in Bethesda and Friendship Heights. The  
23 property is adjacent to and will have access from the  
24 Capital Crescent Trail. In fact, this trail used to be a  
25 railroad serving nearby industrial uses. But now it is a

1 major recreational corridor allowing residents to walk, run,  
2 and bicycle into Bethesda.

3           We recognize the language in the sector plan which  
4 talks about reinforcing the use of land for beneficial,  
5 industrial use. However, we believe the merits of this  
6 rezoning, including providing improved compatibility, and  
7 what we believe to be a better transition with the  
8 surrounding area, outweighs maintaining the existing I-1  
9 zone.

10           The RT-15 zone permits a more appropriate density  
11 than that allowed by the RT zone, RT-10 zone, or for that  
12 matter the RT-12.5, which we believe is more suburban in  
13 character and requires greater open space and setbacks.  
14 Given the orientation of the property, and surrounded on  
15 three sides by park land, we believe the large setbacks of  
16 the other RT zones are simply not needed.

17           Given the size of the property, the TR-10 zone  
18 would only yield 18 units, and not require any MPDU's. The  
19 RT-15 proposal is providing five MPDU's, which we believe is  
20 a large public benefit in an area where there are relatively  
21 few MPDU's.

22           Finally, the existing use on the site qualifies as  
23 a brown field site, and while remediation of a brown field  
24 site is a significant public benefit, it does come at  
25 substantial cost, and the higher density of the RT-15 zone

1 is necessary to make this project economically feasible.  
2 And it will result in increase in the pervious area from  
3 what is now approximately 6.7 percent to 34 percent, which  
4 is a public benefit.

5 Q And now we'll move onto the zoning ordinance  
6 provisions of the RT-15 zone. You are familiar with those,  
7 and the first ones, section 59-C-1.7, it sets forth the  
8 intent and purpose of the RT-15 zone. Did you evaluate the  
9 rezoning application in connection with the purpose clause,  
10 and what were the conclusions that you reached?

11 A I did. There are a number of provisions that  
12 relate to the RT purpose clause. The first states, in  
13 sections of the County that are designated or appropriate  
14 for residential development at densities allowed in the RT  
15 zones. This site was designated for town homes in the  
16 sector plan.

17 The second part of this provision states that  
18 townhouses be approved on sites where this development type  
19 is determined must be appropriate. We believe this type of  
20 development at this density is appropriate for this  
21 location.

22 The second provisions states, in locations in the  
23 County where there is a need for buffer or transitional uses  
24 between commercial, industrial, or high density apartment  
25 uses, and low density one family uses. As previously noted,

1 given the surrounding densities, residential densities as  
2 well as the proximity of commercial and industrial uses in  
3 Westbard, we believe the proposed development does provide  
4 an appropriate transition.

5 MR. GROSSMAN: These are three alternatives. You  
6 can have it either, it's either designated in the master  
7 plan at maybe this density, which it isn't, or appropriate  
8 at this density, or transitional, right. Any one of those  
9 would be sufficient, is that correct?

10 THE WITNESS: Correct.

11 BY MS. BAR:

12 Q But in this case, you find that it meets all three  
13 of the criteria?

14 A That's right.

15 MR. GROSSMAN: Well, do you think that it's, the  
16 language about designated is met, and the density provided  
17 in the master plan is for RT-10, and you're suggesting  
18 RT-15?

19 THE WITNESS: I do. I believe it's in keeping  
20 with the intent of the master plan. Of course, as I  
21 mentioned previously, this particular zone did not exist at  
22 the time the master plan was adopted.

23 MR. GROSSMAN: Right.

24 THE WITNESS: However, we believe that if it did,  
25 it would have been a viable consideration for staff.

1 MR. GROSSMAN: Hang on one second. I don't know.

2 I think that the phrase is ambiguous. I don't think that  
3 the fact that it wasn't around then means that it was  
4 designated at the time. I think that maybe it's the  
5 reverse. Maybe it couldn't have been designated at the  
6 time. That doesn't mean it's not appropriate or it's not  
7 transitional, but I don't know that it's designated.

8 It is designated for RT. The part I find  
9 ambiguous is it doesn't say that it has to be designated for  
10 that particular density. It says that sections of the  
11 County that are designated or appropriate for residential  
12 development at densities allowed in the RT zones.

13 So I'm not sure whether or not this qualifies as  
14 being designated. It's not dispositive, because it has to  
15 be, it may be appropriate and it may be transitional. But  
16 I'm not sure whether it qualifies as designated, since it's  
17 not designating RT-15. But in any event --

18 THE WITNESS: Okay. Fair enough.

19 BY MS. BAR:

20 Q Section 59-C-1.722 outlines requirements for road  
21 design for an RT project. Could you go through whether the  
22 proposed plan complies with these requirements?

23 A Sure. I think it's been mentioned, actually, that  
24 there is one row that contains nine units. However, there  
25 is a waiver provision from section 59-C-1.74(d)(2) which



1 allows a row of more than eight units in those cases where  
2 the MPDU bonus density is being requested, which is the case  
3 here.

4 And in fact, as I think it was previously  
5 testified to, the ninth unit in that row was the extra MPDU,  
6 the fifth MPDU that was added at the request of Park and  
7 Planning staff.

8 MR. GROSSMAN: As far as the other, the two-foot  
9 offset, I mean, it seems to me the qualifier here is that it  
10 says that if necessary in order to accommodate the increased  
11 density, it says that the percentage of green area. Well,  
12 that doesn't really change it. But the road design  
13 requirements of the section may be waived.

14 And so the question I have is, is it necessary to  
15 accommodate the increased density that you would waive the  
16 two-foot offset requirement? I mean how does that connect?  
17 I understand why you may have to have an extra unit there to  
18 accommodate the increased density, and so your row is  
19 extended. Does the same justification apply? And once  
20 again, I'm not sure it makes sense that it's phrased this  
21 way, but that's what it says.

22 THE WITNESS: I think the two-foot waiver that we  
23 would be seeking, that we will be placing a note on the  
24 schematic development plan, I think has less to do with the  
25 MPDU's and more to do simply with good design, or what we

1 believe to be good design for this particular project, as I  
2 think has been testified too, the two-foot setback is a  
3 design element that is more typically found with suburban  
4 townhouses. We believe what we have here are more like city  
5 homes, and we feel that we don't necessarily need that two-  
6 foot setback to create good design.

7 MR. GROSSMAN: You may be right, but then you  
8 better ask for a zoning text amendment because that's not  
9 what it says, unless it's necessary in order to accommodate  
10 increased density.

11 Now, it may be that ends up being the case because  
12 maybe it would be a level of density that you have. You  
13 don't have room to have two-foot offsets. I don't know.  
14 I'm just saying that if you don't have that basis, you don't  
15 meet the statutory requirement.

16 THE WITNESS: Right.

17 MR. GROSSMAN: So anyway, the Board can be wise on  
18 that.

19 THE WITNESS: I can tell you that, yes, it was a  
20 lot of thought was placed on just where that ninth unit,  
21 rather, that fifth MPDU would go.

22 MR. GROSSMAN: Right.

23 THE WITNESS: And that conditions are such that it  
24 is very tight. And there is only so much wiggle room, if  
25 you will, in terms of fitting it.

1           MR. GROSSMAN: Right. See, you may have a perfect  
2 justification for asking for a waiver of that two-foot  
3 offset as well, just, it has to be related to the density  
4 issue, is all I'm saying.

5           THE WITNESS: Right. Right. Okay. Understood.

6           BY MS. BAR:

7           Q     And as to the other development standards, does  
8 the proposal comply with all the other development standards  
9 in the zone, the RT-15 zone?

10          A     Yes. It is, however, noted in the tabulation that  
11 the building setback from any detached dwelling lot or land  
12 classified in the single family detached zone needs to be a  
13 minimum of 30 feet. And we're showing 20 feet.

14                However, the zoning ordinance does permit the  
15 setbacks to be reduced if a more desirable form of  
16 development can be demonstrated at site plan. And that's  
17 just what we intend to do.

18          Q     The District Council must also find that the  
19 proposal is compatible with the surrounding area. Could you  
20 review your analysis of the compatibility of the proposal --

21          A     Sure.

22          Q     -- with the surrounding neighborhood as defined?

23          A     Sure. We believe that this use, townhouse  
24 development at RT-15 density, will be compatible with the  
25 surrounding area, which as I mentioned, has a very diverse

1 mix of uses, not just the single family residential uses  
2 further to the east, but also multi-family and retail,  
3 industrial and office uses to the north and to the west.  
4 And we believe that this plan will provide a compatible  
5 transition between those use.

6 Further, we find that townhouses are inherently  
7 compatible with other single family uses. They are allowed  
8 in all single family zones per MPDU options and cluster  
9 methods.

10 Townhouses reflect the so called old urbanism  
11 that's found in established communities like Georgetown and  
12 Capitol Hill, and it's also key to new urbanism, such as  
13 that found in Kentlands, King Farm, Fallsgrove, Clarksburg,  
14 et cetera.

15 And finally, the specific design features, notably  
16 the binding elements that have been agreed to, we believe  
17 will help to ensure maximum compatibility.

18 MR. GROSSMAN: I don't know if I buy entirely that  
19 townhouses are inherently compatible with single family  
20 detached. I think that the fact that they are residential  
21 and relatively low density residential adds to  
22 compatibility. I'm not sure that you can go all the way to  
23 saying that townhouses are automatically compatible with  
24 single family detached.

25 I think they may be in lots of circumstances, and

1    they may be here, but I don't know if I would go quite that  
2    far. I've seen cases in which they weren't necessarily  
3    compatible due to large height differences and so on. So --

4                    BY MS. BAR:

5            Q        But you were speaking more as to the use.

6            A        Correct. Yes. I recognize that there could be  
7    design elements, whether it's building height,  
8    characteristics that are unique to particular site like  
9    topography which may accentuate the building height or the  
10   relationship to the other surrounding uses. So I recognize  
11   that can be the case. But I generally find that the concept  
12   of a townhouse is compatible with single family homes.

13                   MR. GROSSMAN: Okay.

14                   BY MS. BAR:

15            Q        Did you also have an opportunity to review the  
16   plan and the proposal in connection with the public  
17   facilities requirement, and its impact on public facilities?

18            A        I did. The site, we believe, is adequately served  
19   by Fire and Rescue and Police. Bethesda Company 6 is about  
20   one and three-quarter miles to the north. Bethesda district  
21   station is about two and a quarter miles, also further to  
22   the north.

23                   Montgomery County Public Schools in a letter to  
24   the Planning Board, and I think it's attached to the  
25   technical staff report, estimates that this development will

1 generate approximately eight elementary students, four  
2 middle school students, and four high school students.

3 Currently, enrollments at the Westbrook Elementary,  
4 Westland Middle, and BCC are over capacity. So a school  
5 facilities payment will be required to obtain preliminary  
6 plan approval. We recognize that.

7 Our traffic planner and civil engineer will  
8 testify with regard to the adequacy of public roadways,  
9 water, sewer and utilities.

10 Q And finally, there is a requirement for the  
11 rezoning that the project be found to be in the public  
12 interest. What is your opinion as to whether this proposal  
13 is in the public interest?

14 A I do believe it's in the public interest. In  
15 determining the public interest, the District Council will  
16 look at the master plan conformity, the Planning Board and  
17 Planning Board staff recommendations, the impact on public  
18 facilities, the environment, as well as public policy goals.

19 We believe this proposal meets all of those  
20 criteria. We believe this is a fine example of smart  
21 growth. This type of development is what the County should  
22 see more of, and may very well see more of, given the  
23 limited number of green field sites that are available in  
24 the County.

25 We believe the replacement of this industrial use,

1    this brown field site with a residential use where we're  
2    increasing the perviousness from 6.7 percent to 34 percent  
3    is clearly in the public interest.

4               The storm water management that will be proposed,  
5    which will be environmentally sensitive design to the  
6    maximum extent practical will also be clearly in the public  
7    interest. This plan will add more green area and tree  
8    canopy. It will provide affordable housing with these  
9    MPDU's.

10              The Planning Board staff and the Planning Board  
11    recommend approval of this project. And we believe,  
12    finally, that the development is sensitive and compatible  
13    with the surrounding area. In conclusion, we believe it is  
14    in the public interest.

15              MR. GROSSMAN: Let me return a second, for a  
16    second to the school test, because I see that in the memo  
17    attached, attachment four to the technical staff report, it  
18    notes that subdivision and staging policy, the school's test  
19    finds capacity inadequate at all levels. And that, as you  
20    mentioned, a facilities payment is required for subdivision  
21    approval. But it says, in addition, this place holder  
22    thing. How does that work? How does the place holder,  
23    capital project work?

24              THE WITNESS: I'm not sure I can speak to that, to  
25    be honest with you.

1           MR. GROSSMAN: All right. Because it says that,  
2 it was added to the Capital Improvements Program by the  
3 County Council to avoid residential moratoriums, based on  
4 the projected middle school utilization levels above 120  
5 percent.

6           MS. BAR: Would you like me to speak to that?

7           MR. GROSSMAN: Sure.

8           MS. BAR: There was a possibility that if the  
9 school was operating at over 120 percent of its capacity  
10 that the area could go into moratorium.

11          MR. GROSSMAN: Right, between 105 and 120 you pay  
12 this facility.

13          MS. BAR: Exactly.

14          MR. GROSSMAN: And then after 120 --

15          MS. BAR: Right, but how they determine that is  
16 they look at the capital projects for five years out.

17          MR. GROSSMAN: Right.

18          MS. BAR: And if there is money in the capital  
19 projects that's going to address a shortage, then they can  
20 take that into account. And in the last Council session,  
21 there was money put into the capital program such that this  
22 area didn't go into moratorium. It stayed below the 120  
23 percent, and hence a facilities payment is required at all  
24 three levels.

25          MR. GROSSMAN: All right. Are you finished with



1 Mr. Landfair's testimony?

2 MS. BAR: Yes, I am.

3 MR. GROSSMAN: All right. Cross-examination?

4 MR. KNOPF: I have two quick questions.

5 CROSS-EXAMINATION

6 BY MR. KNOPF:

7 Q As a land planner, what is your opinion as to  
8 whether the proximity of this project to the Crescent Trail  
9 with access by bicyclists and pedestrians, what's your  
10 opinion as to whether that may result in less car trips by  
11 people, say, going visiting Bethesda, or going over to the  
12 River Road shopping area?

13 A I would say that I'm not an expert in traffic  
14 planning, but I would say, based on my experience as a land  
15 planner that intuitively it would reduce vehicle trips. The  
16 sheer proximity to the trail, the convenience of the access  
17 to the trail, the access and location which is convenient  
18 then to Little Falls Parkway and to park users, I think,  
19 will cut down on vehicle traffic in the immediate area.

20 Q Thank you. One last question. At the Planning  
21 Board there was some testimony regarding the, arguing that  
22 this industrial zoning should be maintained rather than  
23 changed. What is your view as a land planner, as to the  
24 compatibility of the industrial zoning from an aesthetic,  
25 noise, and environmental standpoint, if this were to remain

1 industrial?

2 A Well, the existing use, I think most everyone  
3 would agree, is a noxious use, in terms of the impact that  
4 it has with dust and noise and the traffic, truck traffic  
5 that it generates. I think that's a given.

6 And I would also say that that type of use, which  
7 incidentally is a grandfather use in the I-1 zone, this type  
8 of use would not be allowed today if they were to start up  
9 operations. I think it's there by virtue of the fact that  
10 the property was previously a different industrial zone.

11 But having said that, if this use continued, I  
12 think it would continue also to have an adverse impact on  
13 the surrounding area.

14 MR. KNOPF: Thank you. No further questions.

15 MR. GROSSMAN: You kept your word. You said that  
16 was your last question, and it was.

17 MR. KNOPF: Make a note.

18 MR. GROSSMAN: You'll get a credit for the next  
19 time. Mr. Humphrey?

20 CROSS-EXAMINATION

21 BY MR. HUMPHREY:

22 Q Thank you. You mentioned two cases, Mr. Landfair,  
23 which you referred to as appropriate to this case. I can't  
24 remember --

25 MR. GROSSMAN: G-786.

1 THE WITNESS: 786 and G-798.

2 MR. GROSSMAN: And G-798.

3 BY MR. HUMPHREY:

4 Q Those, just to remind you, you said the master  
5 plan did not recommend specific density for the RT zone?

6 A In either case it did not recommend a specific RT  
7 density.

8 Q But in this case, the master plan does recommend  
9 RT-10 --

10 A Correct.

11 Q -- so this is different than either one of those  
12 cases in that respect? Thank you. Financial feasibility is  
13 not a standard in, that appears in the County code to be  
14 applied during rezoning cases, is it?

15 A No.

16 Q The financial feasibility of a project to a  
17 developer?

18 A No.

19 Q Okay. And in reference, then, to buffer, can you  
20 explain to us how this property buffers the single family  
21 residences across the street from the industrial properties  
22 to the north? It would seem to be in a line with them. It  
23 doesn't buffer.

24 A Well, in a way. The site here, of course, the  
25 industrial commercial uses along Butler Road to the north,

1 these uses actually are somewhat buffered by Little Falls  
2 Parkway from the nearby residential community. True, this  
3 use won't necessarily increase that buffer by too much, but  
4 there is, as part of our binding elements, a promise to  
5 increase the buffer along Little Falls Parkway, which can  
6 only help to serve, particularly for those traveling on the  
7 south side of Little Falls Parkway to be further buffered,  
8 screened from the uses along Butler Road. Most of this  
9 buffering, though, of course, will be directly ease of those  
10 uses. So that impact would be somewhat marginal.

11 But by redeveloping this site with residential  
12 uses, landscaping around it, adding additional tree area,  
13 and increasing the buffer along Little Falls Parkway as part  
14 of the binding elements, we do believe it will contribute  
15 with more buffering in that area.

16 Q But in the standards of the zone, the RT zone, it  
17 says to buffer or provide transitional uses between  
18 commercial industrial and high density current uses and low  
19 density family uses, not between industrial areas and  
20 traffic --

21 A Right.

22 Q -- along the parkway.

23 A Right.

24 Q So I'm just asking you again, does this really  
25 buffer any one family, single -- low density one family uses

1 from the industrial uses to the north of the site?

2 A I would say, yes, it does. I could say that just  
3 by virtue of the fact that we're eliminating this industrial  
4 use that exists today, that many would find obnoxious, that  
5 in itself is eliminating the impact to this residential  
6 neighborhood. There has been testimony earlier today about  
7 the direct impact that is --

8 Q Again, Mr. Landfair, it doesn't say replace those  
9 uses.

10 A Right.

11 Q It says to buffer low density one family uses. I  
12 simply can't, I mean, you haven't pointed out to me yet how  
13 this buffers any one family residential use from the  
14 industrial use to the north of the site.

15 And then in terms of transition, the commercial  
16 uses to the west of this on the other side of the trail --

17 A Yes.

18 Q -- what's the difference in elevation, do you  
19 know, between the subject site and those commercial uses up  
20 along Westbard?

21 A Not offhand. I can probably find it in the  
22 exhibits here, if you give me just a few moments. I can  
23 perhaps find something.

24 Q But can you actually ball park it for us? Is it  
25 30, 40, 50 feet?

1           A     I can tell you that just the difference in grade  
2     between the subject site and the Capital Crescent Trail is  
3     about 20 feet.

4           Q     About 20 feet.  So it's not really an effective  
5     buffer between the single family land uses and those  
6     commercial uses on the other side, on the west side either.

7           A     Not in terms of buffering, but in terms of  
8     establishing that transition through density, I would say,  
9     yes, it is.

10           MR. HUMPHREY:  Okay.  Thank you.  That's all I  
11     have.

12           MR. GROSSMAN:  Redirect?

13                         REDIRECT EXAMINATION

14           BY MS. BAR:

15           Q     Mr. Landfair, in your testimony with respect to  
16     findings of compatibility and the other requirements with  
17     the RT zone, you mentioned financial aspects.  But your  
18     testimony is not relying on any financial requirements --

19           A     No.

20           Q     -- for in terms of your opinions?

21           A     No.

22           Q     And just to clarify, it is your opinion that this  
23     serves, the language of 59-C-1.721(b) says, in locations in  
24     the County where there is a need for a buffer or  
25     transitional uses between commercial, industrial, and high

1 density apartment uses, and low density one family uses.

2 And it would be your opinion that this does serve as a  
3 buffer and a transition use in terms of the densities?

4 A Yes, I do.

5 MS. BAR: That's it.

6 MR. GROSSMAN: I just want to, on that specific  
7 point, I'm not quite sure why you admitted in response to  
8 Mr. Humphrey's question that the proposed site would not be  
9 a buffer between the commercial, at least it's commercial to  
10 the west here, and parking lots, and the one family homes to  
11 the east. You said it would be transitional, not a buffer.  
12 I'm not sure why you say that.

13 THE WITNESS: Transitional in terms of density.  
14 Because of the changes in grade and because of the height  
15 and elevation of the Capital Crescent Trail, I don't think  
16 these homes and the landscaping that would be established  
17 for this site would necessarily help to buffer those uses  
18 that are further to the west.

19 MR. GROSSMAN: Because they would have been  
20 visible anyway?

21 THE WITNESS: Correct, just by the changes in  
22 elevation.

23 MR. GROSSMAN: All right. But it is still  
24 transitional in your mind --

25 THE WITNESS: Correct.

1                   MR. GROSSMAN:  -- because you're going from  
2 commercial to townhouse to single family?

3                   THE WITNESS:  Right.

4                   MR. GROSSMAN:  And on the industrial, I guess the  
5 point was, the industrial was further to the north and this  
6 is not serving as a buffer from the industrial.  Is that  
7 the --

8                   THE WITNESS:  I would say for the most part,  
9 that's correct, I guess.

10                  MR. GROSSMAN:  All right.  Okay.  Any further  
11 questions as a result of my questions?  No.  Okay.  
12 Actually, before Mr. Landfair leaves, I know that  
13 Mr. Humphrey indicated in his letter that he had, he opposed  
14 this rezoning for three reasons, one of which was  
15 inconsistency with the master plan.  He also challenged  
16 compatibility, and he says that it doesn't comply with the  
17 zone's requirements.

18                  It might be helpful, while Mr. Landfair is still  
19 here, to hear from Mr. Humphrey on his testimony.  At the  
20 risk of being strangled by Chuck Irish and any other --

21                  MR. IRISH:  I'm here for the duration.

22                  MR. GROSSMAN:  So how do you want to work this?  
23 Do you prefer to hear from Mr. Humphrey now, or do you  
24 prefer to hear from your other witnesses first.  I'll leave  
25 it to you, Ms. Bar.



1                   MS. BAR: I guess it's fine, if you think that's a  
2 more helpful --

3                   MR. GROSSMAN: It's up to you. It's up to you.  
4 Whatever you prefer in terms of your flow. You can have the  
5 rest of your case now, if you prefer.

6                   MS. BAR: But are you suggesting that Mr. Humphrey  
7 go now so that then Mr. Landfair can then respond --

8                   MR. GROSSMAN: Respond.

9                   MS. BAR: -- to him immediately --

10                  MR. GROSSMAN: -- to that. I was going to say --

11                  MS. BAR: -- as opposed to everyone coming up.  
12 That's fine. I think that's fine.

13                  MR. HUMPHREY: May I respond?

14                  MR. GROSSMAN: Okay. Is everybody agreeable to  
15 that? All right. Mr. Humphrey, would you raise your right  
16 hand, please?

17                  (Witness sworn.)

18                  MR. GROSSMAN: All right. You have something to  
19 say to us on behalf of the Civic Federation?

20                                 STATEMENT OF JIM HUMPHREY

21                  THE WITNESS: I do. Yes, thank you. I repeat at  
22 every opportunity, I am representing the Montgomery County  
23 Civic Federation. I wish to present into the record the  
24 testimony that we provided at the Planning Board. I was not  
25 aware that the entire record before the Board was not, of

1 the hearing, was not made a part of this record.

2 MR. GROSSMAN: No. It never is, unless somebody  
3 moves it in, and there is no objection or an objection is  
4 overruled. It's never an automatic part. The only thing  
5 that gets to be part of this record is the technical staff  
6 report and the Planning Board letter, because they don't  
7 take their testimony under oath.

8 THE WITNESS: I don't know then, is it appropriate  
9 for us, for anyone to refer to testimony that occurred  
10 before the Board?

11 MR. GROSSMAN: If somebody objects, we'll rule on  
12 it.

13 THE WITNESS: I'm learning. I'm still learning.

14 MR. GROSSMAN: All right. Or if I object, we'll  
15 rule on it.

16 THE WITNESS: I did want to submit additional  
17 pages. And I have a copy to provide to Ms. Bar as well,  
18 from the sector plan. This was in testimony.

19 MR. GROSSMAN: All right. We'll make that Exhibit  
20 54, yes, 54. And that is -- hold on one second, that's  
21 three, four, let's see, testimony. All right.

22 (Exhibit No. 54 was  
23 marked for identification.)

24 THE WITNESS: And these are four pages from the  
25 Westbard, the Westbard sector plan land uses section. The

1 first two pages are 32 and 35 --

2 MR. GROSSMAN: All right. Let me just, this is  
3 pages 32, page --

4 THE WITNESS: Page 35 on the back, they are  
5 actually consecutive.

6 MR. GROSSMAN: What about 34?

7 THE WITNESS: They are actually consecutive  
8 because 33 and 34 were drawings, so the text is consecutive.

9 MR. GROSSMAN: 32, 35, 51 --

10 THE WITNESS: 51 and 52 refer to analysis of area  
11 K, which is the subject property.

12 MR. GROSSMAN: -- 52. From Westbard sector plan.  
13 That will be Exhibit 55. Okay. You may proceed.

14 (Exhibit No. 55 was  
15 marked for identification.)

16 THE WITNESS: Thank you. First of all, the  
17 position that I am testifying in support of was approved by  
18 a unanimous vote of our executive committee at the April  
19 20th meeting this year.

20 MR. GROSSMAN: All right.

21 THE WITNESS: We were to opposed the rezoning, for  
22 the record. We also oppose the driveway access across park  
23 land which the Board has already approved, the Planning  
24 Board has already approved. We were just late on the draw  
25 in participating in that hearing.

1           A primary concern of the Federation is over the  
2   loss of scarce industrially zoned land in the County. The  
3   Federation expressed that concern initially, that I'm aware  
4   of, publically at the hearing in July of 2009 on a zoning  
5   text amendment related to the Burtonsville employment  
6   overlay zone.

7           And there we urged Council members to quote,  
8   research the location and total acreage of industrially  
9   zoned land in the County to try and ensure that businesses  
10   providing desired or needed goods and services are not  
11   pushed further and further away from their intended customer  
12   base or completely out of the County and into surrounding  
13   jurisdictions, end quote.

14           At that hearing, Council member Leventhal was  
15   astonished to find himself agreeing with the Civic  
16   Federation. I remember it well.

17           MR. GROSSMAN: I'm not going to comment.

18           THE WITNESS: I remember for that very comment  
19   from him. He said, I am surprised to find myself agreeing  
20   with Mr. Humphrey and the Federation. And he called on, at  
21   that point, the PHED committee, I mean, the Planning  
22   Department to do a study on how much industrially zoned land  
23   there was left in the County and how it's currently being  
24   used. I am not aware as to whether that study has ever been  
25   undertaken.

1           But the 1982 Westbard plan, in fact, recognizes,  
2   and here, this is a quote from I believe page 55, quote,  
3   recognizes the original and continuing character of Westbard  
4   of commercial, industrial, and seeks to reinforce this  
5   character, end quote.

6           And another sentence, another paragraph says, and  
7   it says the reason. Quote, because of the substantial  
8   benefit that it provides to businesses and residents of  
9   lower Montgomery County.

10           The plan goes on to state in its initial land use  
11   section, quote, without the necessary goods and services and  
12   a handy location, commercial trucks and residents, passenger  
13   vehicles, would have to travel to similar areas some  
14   distance away for services now provided in Westbard. The  
15   only other nearby -- still quoting -- the only other nearby  
16   industrial land was zoned out of the Bethesda CBD in 1977 as  
17   a result of that sector plan, end quote.

18           Our conclusion was that retention of the I-1 zone  
19   for the whole property, even though it is only 1.81 acres in  
20   size, would be recommended by us, and that retention of it,  
21   rezoning of it would be a significant loss to the County's  
22   portfolio of industrial zoned land.

23           As we told the Planning Board, there are thousands  
24   and thousands and thousands of acres of residentially zoned  
25   land in down County within the beltway, Montgomery County,

1 but there is a real scarcity of industrial zoned land, so  
2 the loss of even this substantial two-acre or almost two-  
3 acre parcel would be significant.

4 MR. GROSSMAN: I have to say, I'm a little  
5 confused. Is there a conflict between wanting to preserve  
6 park land on one hand, and on the other hand seeking to  
7 maintain an industrial zone next to that park land which  
8 clearly, according to the testimony that we received before  
9 you were hear, impacts adversely on that park land?

10 THE WITNESS: The retention of the zoning, we  
11 separate the retention of the zoning from the current use  
12 and impact on the park land --

13 MR. GROSSMAN: Right.

14 THE WITNESS: -- as the plan does. In fact, the  
15 plan says that the I-2 zone should not be retained. It  
16 should be retained to I-1, I believe it is.

17 MR. GROSSMAN: Well, it is I-1.

18 THE WITNESS: Yes. That's what the '82 plan did.

19 MR. GROSSMAN: Right.

20 THE WITNESS: And then it said that either the  
21 plant could be retained or it could be converted to office,  
22 warehouse, light manufacturing, or similar use. So  
23 retention of the industrial zoning on the property, we can  
24 separate from the current use and impact that it has on the  
25 adjacent park land.

1 MR. GROSSMAN: Well, I mean, yes, but still --

2 THE WITNESS: And still argue for the advisability  
3 of retaining industrial zoned land because of the benefit  
4 that it provides to County citizens, residents, and small  
5 businessmen.

6 MR. GROSSMAN: But isn't it likely that industrial  
7 zoned land, you're going to have more of an adverse impact  
8 on neighboring park land than whether or not it's used in  
9 the current use, but just as a general rule, than would  
10 residential townhouses? I'm just somewhat surprised. I  
11 think that, it seems to me that there is an inherent  
12 conflict in that position. I expected you to come here  
13 and --

14 THE WITNESS: Well, part of the reason is, and you  
15 know we have a position, a historical position in support of  
16 master plans.

17 MR. GROSSMAN: Right. And I was anticipating  
18 that.

19 THE WITNESS: So when we see a master plan that  
20 calls for reinforcing the industrial character of an area  
21 and retaining the industrial uses, and then goes to some  
22 great length to explain the public benefit of having those  
23 industrial uses retained --

24 MR. GROSSMAN: But it recommended RT for this  
25 area, for this site.

1           THE WITNESS: And it also recommended rezoning to  
2 I-1 and possible other industrial uses under I-1. The plan  
3 is very schizophrenic, if you will, in that respect.

4           MR. GROSSMAN: I've already used that word today.

5           THE WITNESS: Oh, have you? Because if you look  
6 at the, if you look at the file, if you look at page 35 -- I  
7 did miss some good things. If you look at page 35, you'll  
8 see that the maximum -- where it is? These are bullet  
9 points. Existing, it's on the right column, existing  
10 industrial uses, which suppliers to the region should be  
11 protected to minimize time review costs.

12           You will also see, local commercial services in  
13 Westbark should be preserved and improved. Industrial uses  
14 should be buffered. That's understandable. And then, where  
15 a new development is proposed, wait a minute --

16           MR. GROSSMAN: These are all general, are they  
17 not? I mean, when it comes to the specific area here, does  
18 it not recommend an RT zone for this specific area? And  
19 when you interpret it --

20           THE WITNESS: That's what I'm saying. When you  
21 look at analysis of area K, page 51, it says recommend, I'm  
22 sorry -- a change to I-1 zone is about the sixth line up  
23 before the word recommendation, the underlined word. A  
24 change to I-1 would permit the plan to continue use, but be  
25 converted to office or warehouse or light manufacturing or



1 similar use. And then it also talks about possible use for  
2 townhouses. So even --

3 MR. GROSSMAN: And it says, recommendations --  
4 yes, if access can be gained off Little Falls Parkway, an  
5 appropriate zoning classification would be RT-10.

6 THE WITNESS: So it actually contains two  
7 recommendations.

8 MR. GROSSMAN: Right.

9 THE WITNESS: A recommendation for I-1 zoning, a  
10 recommendation for townhouse zoning. Again --

11 MR. GROSSMAN: All right. And you prefer the  
12 industrial because there's not enough industrial in the  
13 area? Because this is an older plan, and we have to follow  
14 or consider the plan we have. But on the other hand, those  
15 recommendations have to be considered in the light of the  
16 current development of residences in the areas.

17 THE WITNESS: And we certainly understand that,  
18 but that's where we bring up the huge percentage of land  
19 which is zoned for industrial use, and the relatively small  
20 percentage of the land mass in Montgomery County that is  
21 zoned for industrial use. And the value, the public benefit  
22 which is explained here in maintaining the industrial zoned  
23 land. The nearest industrial zoned land, as far as we know  
24 from this, is out in White Flint, phase two area, next to  
25 the railroad tracks, or over in Brookeville or in

1     Lyttonsville or out in the Twinbrook area.

2                 MR. GROSSMAN:   Okay.   So now I understand that you  
3     have indicated you think this is inconsistent with the  
4     master plan, presumably because it has this potential  
5     recommendation, this recommendation in part or possibly for  
6     an industrial zone.   But it also has the RT-10 zone.   Is  
7     there anything else that you think is inconsistent with the  
8     master plan in this proposed rezoning, the sector plan, I  
9     should say?

10                THE WITNESS:   No.   The sector plan, no, actually.  
11     It's the primary argument we made there.

12                MR. GROSSMAN:   All right.   Now, you also, I know  
13     you indicated that you felt that the proposed zoning would  
14     not be compatible with the surrounding area.   Why so?   Why  
15     do you say that?

16                THE WITNESS:   Now you're shaking me off my flow,  
17     but that's fine.

18                MR. GROSSMAN:   All right.   Well, I'll let you back  
19     on your flow, if you want?   You've got to be on your toes  
20     around here.

21                THE WITNESS:   As long as we keep -- right.   Well,  
22     again, the plan appears to be schizophrenic to us.   And, you  
23     know, here it recommends RT townhouse zoning for this  
24     parcel.   But then it clearly admits that it's not  
25     appropriate for the people who live in those townhouses to

1 drive up Butler Road through the industrial area. So it's  
2 only appropriate to put townhouses here if they can turn a  
3 blind eye to the fact that they are living in an industrial  
4 area, and exit on the driveway out to Little Falls Parkway.

5 In fact, the plan itself says, multi-family  
6 residences are interspersed, on page 32, among the  
7 industrial, retail and office uses, contrary to the  
8 desirable planning practice. And yet here, in the analysis  
9 of area K --

10 MR. GROSSMAN: We turn now to --

11 THE WITNESS: -- it recommends just that  
12 undesirable planning practice of interspersing more multi-  
13 family residential with industrial use. And it's  
14 incompatible with the zone, or incompatible with the  
15 surrounding area, we felt, because the RT zoning, 10 zoning,  
16 would have a limited maximum percentage of tract that could  
17 be covered by buildings, to 35 percent of the tract,  
18 requiring the minimum of percentage of tract devoted to  
19 green area of 15 percent.

20 There is no maximum percentage of tract coverage  
21 in the RT-15 zone, and so we felt that this made the RT-15  
22 zoning less compatible with the park land next door, if RT  
23 were granted.

24 MR. GROSSMAN: Of course there is a minimum green  
25 area in the --

1           THE WITNESS: There is a minimum green area, but  
2 all the other RT densities have a maximum percentage of  
3 tract coverage by buildings.

4           MR. GROSSMAN: Right.

5           THE WITNESS: RT-15 doesn't.

6           MR. GROSSMAN: Out of curiosity, do we know what  
7 the building coverage is in the proposed schematic  
8 development plan? I know it's not a required development  
9 standard for the RT-15. But if we have it, I'd be curious  
10 to know what that is, how that compares.

11          MS. BAR: Okay. I don't think we know it.

12          MR. GROSSMAN: Okay.

13          THE WITNESS: And so when you look at the RT  
14 zoning it is only compatible in, we don't find it compatible  
15 with the industrial use nearby because, as you say, it, the  
16 plan almost requires that that townhouse project be able to  
17 avoid admitting that it's an industrial area by using a  
18 driveway access across park land.

19          MR. GROSSMAN: Well, it's a transitional thing. I  
20 mean, the question is, I mean, the zone itself, the RT zone,  
21 according to the statute, says it's designed to be  
22 transitional, along other things. So if it's supposed to be  
23 designed to be transitional from industrial to residential,  
24 and so on, or from commercial to residential, then isn't it  
25 afortiori compatible?

1           THE WITNESS: Well, but you see here, in terms of  
2 the way the site would be used, it doesn't appear to us to  
3 be that way; you know, that it's appropriate that the  
4 residents exit a driveway that allows them to avoid --

5           MR. GROSSMAN: Right.

6           THE WITNESS: -- seeing that they live next to an  
7 industrial area?

8           MR. GROSSMAN: Right, it reduces that impact by --

9           THE WITNESS: But that's for residents only. All  
10 trucks and service vehicles are relegated to accessing the  
11 subdivision from Butler, from River Road via Butler Road,  
12 through the industrial area.

13          MR. GROSSMAN: And what's the, and your last item  
14 was that you felt that this proposal would not comply with  
15 the zone. Why is that?

16          THE WITNESS: Because there are several generic  
17 clauses in the intent of the RT zone --

18          MR. GROSSMAN: Right.

19          THE WITNESS: -- that you have to prevent  
20 detrimental effects to the use of adjacent property. Again,  
21 you think the RT-15, without having a limit on the amount of  
22 building coverage of the tract, percentage of the tract that  
23 can incur building is not the most compatible or would not  
24 prevent detrimental effect on the park land further east.

25          MR. GROSSMAN: It's not going to do a better job

1 of preventing detrimental effect than the I-1 zone?

2 THE WITNESS: It may be doing a better job, but  
3 then the question is, would it do a better job than the RT-  
4 10, recommended in the plan.

5 MR. GROSSMAN: What if it's not possible to do an  
6 RT-10 there and have, actually have the development? I  
7 mean, do you, do you --

8 THE WITNESS: There again, I assert, and I  
9 understand the applicant's concerns with financial  
10 feasibility --

11 MR. GROSSMAN: Well, I'm not considering it from  
12 that standpoint. The standpoint I'm considering it from is,  
13 I've got an application. I don't have an application for an  
14 RT-10. I have an application for an RT-15. And so that's  
15 what I have.

16 Now, your choice is RT-15 or industrial zone.  
17 Which is better for that area?

18 THE WITNESS: It's a hypothetical.

19 MR. GROSSMAN: Right. No.

20 THE WITNESS: It's very --

21 MR. GROSSMAN: No, it's not even a hypothetical.

22 THE WITNESS: No, it is, which is very difficult  
23 to answer because if this townhouse project were not granted  
24 at zoning and went forward, then what would be the next use  
25 on this I-1 zoned property? And might it be a warehouse use

1 or the other things that were called for in the sector plan,  
2 light industrial uses? It might actually improve the  
3 environmental aspects of the site. We don't know.

4 MR. GROSSMAN: Okay.

5 THE WITNESS: There is no way of knowing. What we  
6 looked at then was, does this promote the welfare, another  
7 part of the intent clause of the RT zone. Does it promote  
8 the welfare of the present and future inhabitants of the  
9 District and the County as a whole? No, we find the loss as  
10 we said. We opine that the loss of industrial zoned land is  
11 not promotion of the welfare of the inhabitants of the  
12 County.

13 And then, of course, the fact that an RT zone  
14 complies with all the specific requirements and purposes set  
15 forth in the zone. Shouldn't that be deemed to create a  
16 presumption that the resulting development would be  
17 compatible? We didn't think it was compatible with the park  
18 land or with the industrial use to the north.

19 We certainly understand the Park Department's  
20 readiness to accept a half million dollars and exaction from  
21 the developer in return for improvements to be made to the  
22 trail and to the creek bed and to the surrounding  
23 environment. But we don't find that that's a compelling  
24 argument for granting the zoning.

25 MR. GROSSMAN: Okay. Cross-examination? Mr.

1 Landfair, you have to wait for cross-examination.

2 MR. LANDFAIR: Sorry.

3 MS. BAR: No, I don't have any questions on cross-  
4 examination.

5 MR. GROSSMAN: Cross-examination Mr. Knopf?

6 MR. KNOPF: No, I have no questions.

7 MR. GROSSMAN: All right. You can't have any  
8 redirect then, because they didn't ask you any questions.  
9 All right. Thank you, Mr. Humphrey. I appreciate it.

10 THE WITNESS: I appreciate the opportunity very  
11 much.

12 MR. LANDFAIR: Mr. Grosman, you've asked the  
13 question about building footprint, and my colleague, Chuck  
14 Irish, has done a quick calculation. He estimates it to be  
15 31 percent of the site is covered by buildings.

16 MR. GROSSMAN: Okay. I'm just curious to look at  
17 what the standard is. Do you happen to know that off the  
18 top of your head? I have it here.

19 MS. BAR: Well, there is no standard in the RT-15.

20 MR. GROSSMAN: No, I know there is no standing in  
21 the RT-15.

22 MS. BAR: Okay.

23 MR. GROSSMAN: I was just, out of curiosity,  
24 because the issue was raised, the standard for the --

25 MR. HUMPHREY: We have that on page three of our



1 testimony, Mr. Grossman, for the other RT densities.

2 MR. GROSSMAN: Right. And for ones that

3 provide -- MR. HUMPHREY: It's 35

4 percent.

5 MR. GROSSMAN: Well, it's actually 40 because

6 they're providing MPDU's.

7 MS. BAR: MPDU's.

8 MR. GROSSMAN: And so it's 40 percent for the

9 others for building coverage. So they're well under, their

10 proposal is well under the building coverage that would have

11 been imposed had this been one of the other RT zones.

12 MR. HUMPHREY: I appreciate that --

13 MR. GROSSMAN: Okay.

14 MR. HUMPHREY: -- information. Thank you.

15 MR. GROSSMAN: All right, then. Any, I guess, do

16 you wish to call Mr. Landfair for any rebuttal on this

17 specific point?

18 MS. BAR: Well, I just wanted to have him briefly

19 address the master plan and the general recommendation or

20 comments in the master plan about industrial versus the

21 specific recommendations for this site.

22 MR. GROSSMAN: This is not the usual way that

23 cases are conducted. We're a little bit out of order. I've

24 been accused of being out of order before.

25 REBUTTAL TESTIMONY OF BILL LANDFAIR

1           THE WITNESS: I recognize that, and perhaps it's  
2   unfair to compare the concrete plans with other uses that  
3   might be allowed in the I-1 zone, particularly given that  
4   it's a grandfathered use.

5           However, if you look at the development standards  
6   in the I-1 zone, I would argue that they are setbacks, for  
7   example, are not conducive to compatibility as much as an  
8   RT-15 zone would be in this case, either with the adjacent  
9   park land or with the nearby single family residential  
10   neighborhood.

11           Also with respect to the sector plan, there are  
12   some major --

13           (Discussion off the record.)

14           THE WITNESS: On page 98 of the sector plan it  
15   talks about major issues of major environmental concern  
16   within the Westbard sector area. Noise pollution, we would  
17   argue that this proposed development in the RT-15 zone would  
18   be more compatible from a noise perspective, that you're not  
19   going to have the truck traffic, so you're not going to have  
20   the noise generated from this use that you would from any  
21   number of industrial uses.

22           Stream pollution, clearly with the storm water  
23   management practices that are proposed for this development,  
24   you're going to have more flood control. You're going to  
25   have less possibility of discharge of sewerage, et cetera.

1                   And then finally the plan mentions natural system  
2   degradation brought on by the encroachment into the stream  
3   valley ecosystem. I mean, they're talking about this site  
4   today, this encroachment that is taking place today. It's  
5   going to be cleaned up with this proposed development.

6                   So we would argue again that from a compatibility  
7   perspective that the proposed development would be more  
8   compatible when compared to any number of uses in the  
9   industrial zone.

10                  MR. GROSSMAN: All right. Are you finished then  
11   with his rebuttal?

12                  MS. BAR: Yes.

13                  MR. GROSSMAN: And surrebuttal? Mr. Humphrey?  
14   You don't have to. I'm just saying, just being fair. I  
15   should ask you if you have any questions.

16                  MR. KNOPF: No questions.

17                  MR. GROSSMAN: Do either of you have questions?

18                  MR. HUMPHREY: Well, you know, I, I suppose, yes,  
19   with regard to noise pollution, I don't see the issue or I  
20   fail to understand his explanation if it were used for  
21   office or warehouse or light manufacturing. This site is  
22   not used as a cinder block transfer site anymore. And so  
23   the use that it had can't even be referred to as the current  
24   use. We just fail to see that there could not be an I-1 use  
25   for this site that was not better, had less negative

1 environmental impact than what the previous site was as a  
2 cinder block and brick transfer station.

3 MR. GROSSMAN: Okay. All right. Let's move onto  
4 your next witness then. Did you have a question?

5 MR. KNOPF: Well, I was just thinking, this is  
6 working out so well I have a suggestion that we have one  
7 more witness left for about five minutes. And I know what  
8 he's going to testify about the applicant may want to answer  
9 questions he's raising. So I'm wondering whether it pays to  
10 let him go and then they don't have to have a rebuttal.  
11 They can answer it as part of their testimony, be more  
12 efficient.

13 MR. GROSSMAN: Ms. Bar, what's your preference?

14 MS. BAR: That's fine.

15 MR. GROSSMAN: Okay.

16 MR. HUMPHREY: If you would not mind, I've been  
17 dealing with a personal issue all day and I appreciate --

18 MR. GROSSMAN: So I shouldn't have teased you  
19 about being late today.

20 MR. HUMPHREY: That's fine, I can take it. For  
21 the money I make, zero bucks an hour, I can take it. Thank  
22 you.

23 MR. GROSSMAN: Thank you for sharing your views.  
24 They're very interesting. Thank you.

25 (Discussion off the record.)

1 MR. GROSSMAN: Good afternoon.

2 MR. SALINGER: Good afternoon.

3 MR. GROSSMAN: Almost good evening.

4 MR. SALINGER: We're getting there.

5 MR. GROSSMAN: Slowly but surely. Can you state  
6 your full name, please?

7 MR. SALINGER: Sure. My name is Peter A.  
8 Salinger. I live at 5801 Ridgefield Road, Bethesda, in the  
9 Springfield area.

10 MR. GROSSMAN: All right. Would you raise your  
11 right hand, please?

12 (Witness sworn.)

13 MR. GROSSMAN: All right. You may proceed,  
14 Mr. Salinger.

15 STATEMENT OF PETER SALINGER

16 THE WITNESS: Not only do I live in the  
17 Springfield area, but I'm a member of the Springfield Civic  
18 Association. Springfield is that area that goes essentially  
19 between River and Mass, between Cromwell and the Giant  
20 shopping center.

21 MR. GROSSMAN: And are you here testifying on  
22 behalf of the Springfield Civic Association?

23 THE WITNESS: No, I'm here testifying on behalf of  
24 the CCCFH.

25 MR. GROSSMAN: Okay.

1                   THE WITNESS: In the Springfield Civic  
2 Association, I was voted, almost two years ago, onto their  
3 board of directors, and specifically as the zoning  
4 representative, or the zoning chair of the committee in  
5 Springfield.

6                   Springfield is a member of the CCCFH, and I  
7 receive agendas and notifications from the CCCFH as members  
8 of all of the civic associations who are members of CCCFH  
9 do.

10                  MR. GROSSMAN: So are you a member of the board of  
11 the CCCFH? Or are you --

12                  THE WITNESS: No, I just, like many other  
13 representatives, I just come and listen, put in my two  
14 cents, vote on matters that have come up with the CCCFH as a  
15 member.

16                  MR. GROSSMAN: No, but what I was getting at is,  
17 you said you are here in a representative capacity for  
18 CCCFH. And how did you obtain that license to represent  
19 them? What is your basis for saying that?

20                  THE WITNESS: Well, when the CCCFH was looking  
21 around for people to testify at this hearing, and a lot of  
22 people around town are on vacations and stuff, I raised my  
23 hand and I said, well, if you would like somebody to  
24 testify, I would be glad to do that.

25                  MR. GROSSMAN: All right.

1 THE WITNESS: I've been --

2 MR. GROSSMAN: So they authorized you to testify  
3 on their behalf.

4 THE WITNESS: Yes, they did.

5 MR. GROSSMAN: Okay.

6 THE WITNESS: Yes, they did. I should say that  
7 not only am I a member of the CCCFH, but I also walk on the  
8 Capital Crescent Trail, from one to three, sometimes four  
9 times a week. So I'm kind of familiar with this. My wife  
10 and I have lived in the corner of Ridgefield Road and Ogden  
11 for 34 years.

12 My testimony today will address why it is  
13 essential to have the binding elements that the applicant  
14 EYA has agreed to, if parking issues are resolved.

15 Earlier, I'd like to add information that was  
16 presented earlier in regard to the photos that were given to  
17 you this morning by Ms. McDonald, I took most of them.

18 MR. GROSSMAN: You plead guilty?

19 THE WITNESS: Guilty, yeah. I took them on  
20 Wednesday, the ones on River Road, Wednesday morning at  
21 around 8:45 a.m., and the ones on Butler Road Thursday  
22 morning -- Thursday afternoon, around 2:45. So --

23 MR. GROSSMAN: This last, past week?

24 THE WITNESS: Yes. The week, last week.

25 MR. GROSSMAN: Okay. Let me interrupt you for one

1 second. I just want to make sure. It looks like we will  
2 probably run a little bit over. So I just want to make  
3 sure, can the court reporter stay a little late today?  
4 Thank you. Okay.

5 THE WITNESS: I'd like to speak to a couple of the  
6 elements on these photos. They start on page three, photo  
7 J. This is a Wednesday morning in the middle of the summer  
8 and you can see the traffic is backed up going westbound to  
9 where the road, to where River Road curves. And it's much  
10 worse in the winter, much, much worse. And I'll get to that  
11 later.

12 On page one you will also see in photo A that the  
13 traffic backs up to the light at Little Falls, and it's much  
14 worse in the winter.

15 MR. GROSSMAN: So what's your point in showing me  
16 this traffic backup?

17 THE WITNESS: Well, the reason I'm showing this  
18 traffic backup is, I'm leading into a problem that exists  
19 with cut through traffic, and I'm very concerned with  
20 potential cut through traffic from River to Butler, through  
21 the proposed townhouses, onto Little Falls, down Little  
22 Falls to Mass and then into D.C.

23 MR. GROSSMAN: I see. So they're going to avoid  
24 all that traffic between Butler and Little Falls by cutting  
25 down through and around. I see. Okay.



1 THE WITNESS: Not all of it, but some of it.

2 MR. GROSSMAN: I understand.

3 BY MR. KNOPF:

4 Q Is there a long wait on River Road when you have  
5 to go through Little Falls?

6 A Oh yes.

7 Q So if you are talking about --

8 A That exists today.

9 Q -- you're talking about, some people might try to  
10 get around that long wait by --

11 A Yes, even though the roads aren't that far apart,  
12 the backups are tremendous. Now, I testified that I live  
13 just off River Road. If you go past Colesville and River  
14 Road --

15 MR. GROSSMAN: Ridgefield and Ogden.

16 THE WITNESS: Yes. You know where that is?

17 MR. GROSSMAN: I do.

18 THE WITNESS: Okay. Great. So we live on the  
19 corner. And our dining room overlooks that corner of  
20 Ridgefield and Ogden. Today, I see cars turning right off  
21 River onto Ogden, past our dining room window. Sometimes  
22 they stop at the stop sign. And they turn left on  
23 Ridgefield, and take it all the way down to Westbard, and  
24 then turn right following Westbard all the way down to  
25 Massachusetts Avenue, and then turn left going into the

1 District.

2 Well, I don't take that route very often going  
3 downtown in the morning, but if I do, that's exactly the  
4 route I take, because being on River Road is just an extra  
5 10 minutes.

6 MR. GROSSMAN: I always mean to take it, but I  
7 always miss it somehow.

8 THE WITNESS: I'll give you directions after. And  
9 you won't be the first. So, before I leave these photos,  
10 this is a little bit out of order.

11 MR. GROSSMAN: Yes.

12 THE WITNESS: But before I leave these photos, I'd  
13 like to talk about page one, photo C. That's my car in the  
14 foreground on the right.

15 MR. GROSSMAN: Okay.

16 THE WITNESS: When you leave the public area, and  
17 the public, the paved area, the road takes a 45 degree angle  
18 to the left, and then goes past this last building. And you  
19 can see in the distance on photo C and closer up on photo B  
20 the entrance north to the Vetco site.

21 I'm usually up on the trail at this point, but I  
22 as amazed at how dusty it was. I believe that anybody who  
23 tries to park on Butler Road, or off Butler Road where the  
24 sports facility is, is going to get wet, dusty, going to be  
25 in a difficult situation.

1 MR. GROSSMAN: Okay.

2 THE WITNESS: So therefore, I believe that parking  
3 has got to be on site in the proposed townhouse community.  
4 Okay.

5 MR. GROSSMAN: Well, do you differ from  
6 Ms. McDonald's statement that she, although she wants to see  
7 some change in the parking, make sure that the parking,  
8 onsite parking is improved, she still feels that overall  
9 she's recommend approval of this rezoning?

10 THE WITNESS: I'm glad you asked me that, because  
11 I was shocked when I heard Ms. McDonald state what she did,  
12 because at the last meeting the representatives who were  
13 there solidly voted for approving what's going on, gone on  
14 so far, including the binding elements, except for the  
15 parking situation.

16 And so therefore when Mr. Knopf was disagreeing  
17 with what Ms. McDonald was saying, I agree with Mr. Knopf.  
18 And that's what we agreed to at the CCCFH meeting, either  
19 last week or the week before.

20 MR. GROSSMAN: And so if, in fact, the parking  
21 cannot be improved beyond what's been testified to already  
22 by the applicant, then you would say, you'd rather leave it  
23 as an industrial zone?

24 THE WITNESS: In the short run, yes. I don't  
25 think it's a good use. I disagree with the gentleman -- I'm

1 not an expert, but I disagree with leaving it as an  
2 industrial zone. But I don't, I don't think that EYA has  
3 solved the problem that exists in regard to parking.

4 MR. GROSSMAN: Okay.

5 THE WITNESS: That's my personal belief.

6 MR. GROSSMAN: No, I understand that. But I'm  
7 saying --

8 THE WITNESS: But the EYA -- the CCCFH members  
9 were solidly in that corner.

10 MR. GROSSMAN: In that corner meaning, if, in  
11 fact, the parking cannot be changed to what you think it  
12 ought to be, that you would opposed rezoning from industrial  
13 to a resident zone? Because that's what it comes down to.

14 THE WITNESS: Yes, I know.

15 MR. GROSSMAN: And so ultimately, somebody has got  
16 to make a decision. And admittedly, I understand that you  
17 want more parking. But if, in fact, the additional parking  
18 is not in the offing, except for the additional parking that  
19 the applicant has testified to will be available, which is  
20 some of it on the driveways and some additional, a couple of  
21 additional public spaces, then you're telling me that you  
22 prefer it be left an industrial zone.

23 MR. KNOPF: May I ask some questions to refresh  
24 his recollection?

25 MR. GROSSMAN: Sure. Why not?

1 BY MR. KNOPF:

2 Q Am I correct, the coordinating committee voted  
3 that they found this a positive project?

4 A Correct.

5 Q Because all their concerns were resolved. And if,  
6 if the parking were resolved, they found it a positive  
7 project?

8 A Absolutely.

9 Q Did the coordinating committee take a vote as to  
10 what they would do if, in fact, the parking was not  
11 resolved?

12 A I don't think we did, did we?

13 Q Okay.

14 MR. GROSSMAN: It seems to me that that's the  
15 other side of the coin, isn't it.

16 MR. KNOPF: Well, to be frank, it didn't occur to  
17 us because we thought it was resolvable readily, and we were  
18 doing so well up to that point, that we figured we would do  
19 well if we went along.

20 MR. GROSSMAN: Okay. All right. All right.  
21 Okay.

22 THE WITNESS: Talking about sufficient parking,  
23 our next door neighbor has two little girls. They own three  
24 cars. And when, during the day, their nanny parks her car  
25 there. So when we talk about having sufficient parking,

1 it's really going to be interesting as to how it works out.

2 And I haven't heard any quantified information as to how  
3 many parking spaces are going to be taken up, because our  
4 next door neighbor is like --

5 MR. GROSSMAN: Well, I think you have as much  
6 quantity information as you can get at this point. They  
7 have the number of spaces they'll have available in the  
8 garages, the number of spaces that might be available in the  
9 driveways, the number of visitor spaces, which is to say  
10 eight. You've got what is quantifiable at this point,  
11 because of course there is another level of review beyond  
12 the Council, and that is the site plan review.

13 THE WITNESS: I agree. I agree. My concern is  
14 primarily with those cut through things.

15 MR. GROSSMAN: Right.

16 THE WITNESS: My understanding is that the  
17 applicant has agreed to limit access from Butler Road into  
18 the townhouse community to prevent cut through traffic. Am  
19 I correct on that?

20 MR. KNOPF: You can't --

21 MR. GROSSMAN: We'll let him ask that question.

22 THE WITNESS: I'm sorry.

23 MR. GROSSMAN: Has there been an agreement to  
24 limit the cut through traffic? Is that --

25 MR. KNOPF: Let me -- I can -- okay. I'm trying

1 to find the -- okay. I refer to the proposed binding  
2 element number eight on Exhibit 51. Could you read that,  
3 please?

4 THE WITNESS: Truck ingress to and egress from the  
5 site will be solely, solely by a connection to Butler Road  
6 with such connection having a travel control mechanism or  
7 mechanisms restricting through traffic from Butler Road to  
8 Little Falls Parkway, and Little Falls Parkway to Butler  
9 Road, so as to prevent cut through traffic by any vehicle  
10 use not associated with the development.

11 MR. GROSSMAN: So that satisfies you.

12 THE WITNESS: So that -- yes. And it's, I know  
13 that is probably an item for site plan, but it will interest  
14 me to see --

15 MR. GROSSMAN: Well, no, no. That's a binding  
16 element.

17 THE WITNESS: Yeah.

18 MR. GROSSMAN: That means that if, and we're going  
19 to send this onto technical staff for them to look at it.  
20 Technical staff are the people who look at it initially at  
21 site plan. But if they have a problem with it, they'll have  
22 to let us know. But if not, and if this rezoning is  
23 approved, this will be a binding element that cannot be  
24 changed unless the Council changes it. So site plan, they'd  
25 be stuck with this at site plan.

1 THE WITNESS: I see.

2 MR. GROSSMAN: Once it's passed --

3 THE WITNESS: Well then I would like to recommend  
4 to you, sir, that you ensure that that binding element is  
5 made sufficiently stringent enough that it will allow access  
6 by pedestrians, strollers, bicyclists. These are all people  
7 I see on the Capital Crescent Trail in that area. And we  
8 have to have something that will stop a car, but at the same  
9 time allow people to come through.

10 MR. GROSSMAN: Well, this, I don't think this  
11 binding element doesn't mention that kind of traffic,  
12 although one could consider bicycles, I suppose, to be cut  
13 through traffic that would be controlled.

14 MR. KNOPF: There's another binding element that  
15 provides for pedestrians and bicyclists will have access  
16 through the Little Falls --

17 MR. GROSSMAN: All right. All right. But I  
18 won't, see, I won't change these binding elements myself.

19 THE WITNESS: Okay.

20 MR. GROSSMAN: Once they are agree to, and this is  
21 what the developer -- the developer has a right to submit to  
22 the Council what it wants to submit for approval or  
23 disapproval. They have a right also to reach agreements  
24 with members of the community as to binding elements they're  
25 willing to live with, which restrict them in some ways in



1 exchange for getting support for their application. I can't  
2 tell them, no, you can't have this binding element, or yes,  
3 you can. I can suggest some changes, perhaps, but this has  
4 been teased out by a lot of negotiations, so I'm not  
5 inclined to mess with it if I don't have to.

6 MR. KNOPF: I'd like to advise the hearing  
7 examiner that the binding elements you've referred to were  
8 not revised but were proposed to the Planning Board at the  
9 time of the public hearing, and went through. The staff had  
10 them, and so on. So these are not new since the public  
11 hearing.

12 MR. GROSSMAN: Okay.

13 THE WITNESS: I'm going to stop after one more  
14 item.

15 MR. GROSSMAN: Okay.

16 THE WITNESS: And it's just advisory. I think it  
17 was Ms. Dunner who stated that she hoped the developer would  
18 put in aprons as the pathway comes up to the trail. Was  
19 that -- it was somebody.

20 MR. KNOPF: I don't think it was an apron, but it  
21 was rest area she wanted.

22 THE WITNESS: No, no, no.

23 MR. GROSSMAN: A landing as to the --

24 THE WITNESS: She was talking --

25 MR. GROSSMAN: A landing. Right.

1 MR. KNOPF: A landing.

2 THE WITNESS: It was a landing.

3 MR. GROSSMAN: Right.

4 THE WITNESS: The only accident I've seen on the  
5 trail was between a pedestrian and a bicyclist, and it was  
6 at an area where there wasn't an apron. So I just want to  
7 second that, that idea. I mean, it's not a big deal, but I  
8 think it's very important for safety purposes.

9 MR. KNOPF: Thank you.

10 MR. GROSSMAN: Yes, that's not really a rezoning  
11 issue, but I understand.

12 THE WITNESS: No, no.

13 MR. GROSSMAN: Right.

14 THE WITNESS: I just want to state that so that  
15 nobody gets hurt.

16 MR. GROSSMAN: Okay. Good.

17 THE WITNESS: And I thank you very much.

18 MR. GROSSMAN: You're welcome sir. But I have to  
19 allow you to be cross-examined. Did you have any cross-  
20 examination questions?

21 MS. BAR: No.

22 MR. GROSSMAN: Mr. Knopf?

23 MR. KNOPF: Thank you.

24 MR. GROSSMAN: Thank you very much, sir. And I  
25 know you waited around all day, so you get some kind of, you

1 get some kind of a metal, at least, for putting up with us  
2 all day. I appreciate you taking your time. All right.

3 THE WITNESS: I thank you.

4 MR. GROSSMAN: The next witness. Maybe we can  
5 take a three minute break here until 5:00, and then come  
6 back and finish with these last two witnesses?

7 MS. BAR: I might bring back Mr. Youngentob just  
8 for a rebuttal, a short rebuttal --

9 MR. GROSSMAN: Okay.

10 MS. BAR: -- if there are points that are in  
11 question.

12 MR. GROSSMAN: All right. I know that Mr. Irish  
13 will only take a minute or two, right?

14 MS. BAR: They're not, they're not long.

15 MR. GROSSMAN: And I don't know about your last  
16 witness.

17 MS. BAR: And we do want to finish.

18 MR. KNOPF: Who's the last witness?

19 MS. BAR: Chris Kabatt.

20 MR. GROSSMAN: All right. So let's take a two  
21 minute break here. We'll come back at 5:00.

22 (Whereupon, at 4:57 p.m., a brief recess was  
23 taken.)

24 MR. GROSSMAN: All right. We're back on the  
25 record. You may call your next witness.

1                   MS. BAR: Yes, I'd like to call Chuck Irish, call  
2 him to testify.

3                   MR. GROSSMAN: Could you identify yourself, your  
4 full name and address, for the record, please?

5                   MR. IRISH: My name is Chuck Irish. I work for  
6 VIKA Incorporated in Germantown, Maryland. I'm the founding  
7 principal of the firm.

8                   MR. GROSSMAN: All right. Would you raise your  
9 right hand, please?

10                   (Witness sworn.)

11                   MR. GROSSMAN: All right. You may proceed.

12                   MS. BAR: And Mr. Irish has testified before this  
13 office many times, and been admitted as an expert. I  
14 submitted his resume previously, but I can't find it in that  
15 file, so I have another one.

16                   MR. GROSSMAN: Yes, I didn't see the resumes in  
17 there, but okay.

18                   MS. BAR: So I will give you another one. But we  
19 would like to qualify him as an expert in surveying and  
20 civil engineering.

21                   MR. GROSSMAN: Okay. I don't know if you've every  
22 testified before me on surveying, have you? Civil  
23 engineering.

24                   THE WITNESS: I've testified before you. I don't  
25 recall whether I have in surveying or not.

1                   MR. GROSSMAN: That was civil engineering, I  
2   thought.

3                   THE WITNESS: I am a licensed surveyor in both  
4   Maryland and Virginia.

5                   MR. GROSSMAN: All right.

6                   THE WITNESS: And have been for many years.

7                   MR. GROSSMAN: All right. That will be Exhibit 56  
8   is your resume. Okay, any questions regarding this witness'  
9   expertise?

10   (Exhibit No. 56 was  
11   marked for identification.)

12                   MR. KNOPF: We have no objection to his testifying  
13   as an expert.

14                   MR. GROSSMAN: All right. Given his prior  
15   testimony before this office and others, as a civil  
16   engineer, I accept him as an expert in civil engineering.  
17   And based on his reported qualifications as a surveyor, I  
18   accept him as an expert in that capacity as well.

19                   THE WITNESS: Thank you.

20   DIRECT EXAMINATION

21                   BY MS. BAR:

22               Q     Could you please describe, Mr. Irish, the civil  
23   engineering services that were provided by VIKa with respect  
24   to this local map amendment application?

25               A     Yes. My staff and I conducted, initially, surveys

1 on the property including boundary, topographic, as well as  
2 the natural resources and forest delineation plan. We also  
3 prepared conceptual plans for development and subsequently  
4 the site portion of the rezoning application which included  
5 the schematic development plan, surrounding area plan, and  
6 ID plat.

7 We obtained the certified zoning map, also  
8 prepared fire access plan, green space plan, circulation  
9 plan.

10 MR. GROSSMAN: And while you have Mr. Irish here,  
11 you might want to have him certify that surveyors plat, the  
12 revised on, Ms. Bar, that was not certified by the surveyor.

13 MS. BAR: Yes. Yes.

14 THE WITNESS: Actually, I would rather have the  
15 person that did the survey sign it. He was under my  
16 direction. He worked for me, not the specific --

17 MR. GROSSMAN: I will certainly leave that to you  
18 to -- it should be done, though.

19 THE WITNESS: Right. We'll take care of it.

20 MR. GROSSMAN: Okay. Thank you.

21 MS. BAR: I apologize, but I have an old version  
22 of Mr. Irish's testimony. No, no, I have the right one.  
23 Sorry. I pulled out the wrong one.

24 BY MS. BAR:

25 Q Are you familiar with and have you inspected the

1 property and the surrounding area?

2           A       Yes, I am familiar. I've lived in the area for  
3 many years. I've certainly, during the past, at many times,  
4 ask Mr. Youngentob, as I've visited it as recently as  
5 yesterday. In fact, I was the one that straightened the  
6 sign up that was knocked over. So I am very familiar with  
7 the area.

8           The site has been described before, but in brief  
9   description of it, it's obviously improved with a very  
10   noxious industrial use at the present time.  It's bounded on  
11   the northwest by the Capital Crescent Trail, on the  
12   northeast by the other industrial buildings, EuroMotors  
13   repair shop is the first one in that line at the end of  
14   Butler Road.

15           The southeast side is park land which includes  
16 Little Falls Parkway and also includes the stream for  
17 Willard Branch that parallels the southeast boundary line.  
18 It starts at the northeast corner. Actually, why don't we  
19 introduce this exhibit and I can do it on there.

20 MS. BAR: And we will introduce as --

21 MR. GROSSMAN: 57.

22 MS. BAR: -- 57, this is a rendered schematic  
23 development plan.

24 (Exhibit No. 57 was  
25 marked for identification.)

1           MR. GROSSMAN: The one you had sent me, and I  
2 think that one, too, is the -- yes, it is also the one with  
3 the three binding elements on it.

4           THE WITNESS: Correct.

5           MS. BAR: Yes, this is the one with the three  
6 binding elements. We will be revising that.

7           MR. GROSSMAN: Right. So when you revise your  
8 STP, I guess you need to revise your rendered plans as well,  
9 to avoid confusion.

10          THE WITNESS: We'll be glad to.

11          MR. GROSSMAN: See that's my point.

12          MS. BAR: Yes. Yes. No, that's fine. Okay.

13          MR. KNOPF: What's 54 and 55 and --

14          MR. GROSSMAN: Okay. 54 is Jim Humphrey's  
15 testimony. 55 is pages 32, 35, 51 and 52 of the Westbard  
16 sector plan. 56 is Chuck Irish's resume.

17          MR. KNOPF: Thank you.

18          MR. GROSSMAN: You're welcome.

19          MR. KNOPF: Sorry.

20          THE WITNESS: Describing the site and the adjacent  
21 properties, we were talking about the northeastern boundary  
22 which I'm highlighting here, adjacent to EuroMotors. Then  
23 the southeastern boundary includes park land and Little  
24 Falls Parkway. The stream comes out of a culvert in this  
25 location here, which would be the, I guess the northern



1 quarter of the property, and then --

2 MR. GROSSMAN: The northeastern corner.

3 THE WITNESS: -- northeast corner, and then runs  
4 in a concrete channel, a different shape, until about almost  
5 the southern corner of the property, and then it transitions  
6 into a more natural stream. Then the entire western  
7 boundary is wooded park land.

8 The runoff from the site, basically just sheet  
9 flows from the rain, down from the buildings and onto the  
10 pavement, across, and just flows down into the stream  
11 channel. There does not appear to be any storm water  
12 management whatsoever on the site, or even a storm drain.  
13 It is over 93 percent, almost 94 percent impervious  
14 currently. And that's not even counting the almost 10,000  
15 square feet of encroachment in the park land.

16 I think we measured it approximately 9600 square  
17 feet of encroachment along the western or southern boundary,  
18 northern boundary, and most of the eastern boundary goes all  
19 the way to the stream, rather than the setback that the park  
20 owns from the stream.

21 MR. GROSSMAN: What about under the current plan,  
22 STP that you are proposing. What would be the percentage of  
23 impervious land?

24 THE WITNESS: Obviously, it would be somewhat a  
25 function of the final plan --

1 MR. GROSSMAN: Right.

2 THE WITNESS: -- but where we are at this point,  
3 let me just double check. I believe we are about 34  
4 percent.

5 MR. GROSSMAN: That was the building cover.

6 THE WITNESS: No.

7 MS. BAR: No.

8 THE WITNESS: The pervious coverage that we have  
9 would be -- the green area, not as defined in the zoning  
10 ordinance, but pervious area --

11 MR. GROSSMAN: Right.

12 THE WITNESS: -- we've calculated to be 34 percent  
13 based on this plan, on the site areas.

14 MR. GROSSMAN: 66 percent impervious?

15 THE WITNESS: Correct.

16 MR. GROSSMAN: Well, see, I thought that -- I was  
17 in the impression, at least, that your green area was that  
18 34 percent or whatever. But that doesn't mean that -- not  
19 all non-green area is impervious. So you could have more  
20 pervious area than just the green area. Am I correct?

21 THE WITNESS: It's actually the other way around.  
22 Green area includes sidewalks --

23 MR. GROSSMAN: Okay.

24 THE WITNESS: -- under the definition, the zoning  
25 ordinance definition, and plazas and those types of things.

1 MR. GROSSMAN: True.

2 THE WITNESS: So we've taken all of the area that  
3 would, under this plan, that would not be sidewalks or  
4 roadways or the -- bay window projections. And again, it's  
5 illustrative at this point, but it gives you an idea of  
6 where we are.

7 MR. GROSSMAN: So you're saying that the, under  
8 your current plan, the level of pervious area is --

9 THE WITNESS: 34 percent.

10 MR. GROSSMAN: -- 34 percent pervious. So that  
11 would be 66 percent impervious.

12 THE WITNESS: Impervious, as opposed to almost 94  
13 percent currently. While we're talking about numbers, the  
14 -- Mr. Landfair testified to a calculation that I quickly  
15 made with respect to building coverage --

16 MR. GROSSMAN: Right.

17 THE WITNESS: -- being approximately 31 percent.  
18 That's a function of what the final unit sizes will be, and  
19 so forth. Clearly, we're well under, it's somewhere between  
20 30 and 40, well, much closer to the 30 percent range.  
21 Again, it's illustrative at this point.

22 BY MS. BAR:

23 Q Mr. Irish, could you please review the proposed  
24 storm water management concept plan, the elements of that  
25 which will be prepared in connection with this application?

1           A     Yes.  As you pointed out before, Mr. Hearing  
2   Examiner, the State of Maryland and Montgomery County have  
3   changed the rules, if you will, and have forced development  
4   to focus much more on environmental site design.  This site  
5   will clearly qualify as a redevelopment site, which under  
6   State law would only require reducing imperviousness by 50  
7   percent, or treating through environmental site design to  
8   the maximum percent practicable, 50 percent of the site  
9   area.

10                   However, under Montgomery County law, we're  
11   required to treat 100 percent.  So the requirement for this  
12   site will be to the maximum extent practicable using  
13   environmental site design treating all of the impervious  
14   areas on the site.

15                   We expect to submit, we're in the process of  
16   preparing a plan that will treat most of the site runoff  
17   with environmental site design measures.  However, this is  
18   going to be a function of whether the infiltration capacity  
19   works on the site, which has not yet been tested, and will  
20   also be a function of the environmental quality or existence  
21   of potential contaminants in the soil.

22                   If MDE or the County do not want infiltration  
23   because of potential contaminants, then we would be  
24   precluded from most of the environmental site design  
25   measures.  They're still on the site, as Mr. Knopf pointed

1 out, to provide structural measures. In fact, they take up  
2 less space than environmental site design. But we believe  
3 that we -- absent a concern with the soil quality, we should  
4 be able to treat most of the site with environmental site  
5 design measures, and a portion that wouldn't be treated  
6 with, that you couldn't capture that you would either treat  
7 structurally or you would treat more of the other water as  
8 an offset.

9 MR. GROSSMAN: Any ideas if you are required to  
10 treat it structurally, then you actually have more places  
11 for parking because you wouldn't have the open areas?

12 THE WITNESS: In theory, you would. The area that  
13 we are looking at for the environmental site design  
14 measures, the primary measure would be this location here,  
15 which is, I guess, east of the six parking spaces.

16 MR. GROSSMAN: Okay.

17 THE WITNESS: And it would take up --

18 MR. GROSSMAN: It's in the northeast corner.

19 THE WITNESS: Northeast corner. It would take up  
20 most of that site area. And a structure wouldn't take up as  
21 much as that area. But in theory, you could extent and  
22 partially have tandem spaces there.

23 MR. GROSSMAN: Right.

24 THE WITNESS: You're increasing imperviousness by  
25 doing so. But if you didn't have an environmental measure

1   there, there would be room to at least have some tandem  
2   spaces there.

3               MR. GROSSMAN:  I think also as long as it was  
4   raised, the fear of the environmental contaminates, perhaps  
5   it would be good for you to address that for a few minutes  
6   as to how that is required to be handled as you go along  
7   this process.

8               THE WITNESS:  Okay.  I am not an environmental  
9   engineer or specialist with respect to contaminates, but the  
10   applicant, I believe, is handling that through the Maryland  
11   Department of Environment.  Whatever contaminates would be  
12   shown in the report, would need to get a clean bill of  
13   health from them with respect to our plan.  So there's  
14   nothing that we could do on the site without their  
15   permission relative to this issue.

16              MR. GROSSMAN:  And their permission is, is it  
17   premised upon protecting the public from environmental harm?

18              THE WITNESS:  Absolutely.  I've seen it involved  
19   with other projects where they allow, where the contaminate  
20   is a concern about being airborne, so once you final grade  
21   the site, there might be a layer or two of clay or something  
22   put in so that you don't get infiltration.  If this is a  
23   contaminate that isn't problematic with ground water, or  
24   might be filtered by time if it gets to the ground water,  
25   then it wouldn't necessarily have a concern with the

1 infiltration.

2 But we haven't looked into that yet. Our first  
3 step was really to see, is there a way to do it, assuming  
4 the soil can handle it. We've got additional testing to run  
5 at this point.

6 MR. GROSSMAN: All right.

7 MS. BAR: And that is, in fact, why in the law  
8 they say, they have the provision that it's to the maximum  
9 extent practicable, because all of these things come in to  
10 play as you are getting those plans reviewed and approved.

11 THE WITNESS: Yes.

12 MR. GROSSMAN: Have you submitted a storm water  
13 management concept plan at this point?

14 THE WITNESS: No, sir.

15 MR. GROSSMAN: Okay.

16 THE WITNESS: It's being prepared at this point.

17 BY MS. BAR:

18 Q And needless to say, just finalizing your  
19 testimony --

20 A Yes.

21 Q -- in terms of compared to the current site, in  
22 terms of the storm water management, what would your opinion  
23 be with respect to that?

24 A If we did nothing other than with respect to storm  
25 water management, other than build this site and decrease

1 the imperviousness from 94 percent to 64 percent, that in  
2 and of itself would be a major improvement. That compounded  
3 with the buffer plantings that would be involved in moving  
4 the impervious area immediately adjacent to the stream, a  
5 major environmental improvement. We're not trying to say  
6 that's all we're going to do. I'm just saying, that alone  
7 would be a major improvement. Added to that, we're going to  
8 treat the other runoff from the site as well.

9 MR. GROSSMAN: And based on your experience, is  
10 there any reason, in your professional opinion, why you  
11 cannot meet appropriate standards for storm water  
12 management?

13 THE WITNESS: No. There's no -- I don't have any  
14 doubt.

15 MR. GROSSMAN: Okay.

16 MS. BAR: That was my next question, so you asked  
17 it. I'll move on.

18 MR. GROSSMAN: I tend to do that.

19 MS. BAR: That's all right.

20 BY MS. BAR:

21 Q Are the water, sewer, gas, and other utilities  
22 available at capacities adequate to serve the proposed  
23 development?

24 A Yes, they are. This site is currently served by  
25 all utilities. And eight inch water main exists in Butler



1 Road and literally abuts the subject property, actually dead  
2 ends at that point. There's a major sewer line that abuts  
3 the property in that area that crosses the creek and  
4 continues southerly, 27 to 30 inch sewer lines. WSSC in  
5 their response to the submittal indicated that both would be  
6 adequate to serve.

7 MR. GROSSMAN: Right. They were attached to the  
8 technical staff report, if I recall.

9 THE WITNESS: That's correct. Gas, the property  
10 is currently served by gas, as well as electric, and those  
11 capacities would be adequate for the project.

12 BY MS. BAR:

13 Q More generically, what is your opinion as to any  
14 possible or adverse impact on the surrounding area, in terms  
15 of the civil engineering aspects of the project that you  
16 reviewed?

17 A I really don't see any adverse impact to the  
18 surrounding area. Obviously, during the construction there  
19 would be land disturbance going on. But that construction  
20 will be subject to sediment control measures, which would  
21 have to be prepared, of course, with the County law, and  
22 approved by Montgomery County Department of Permitting  
23 Services.

24 Storm water management, as we've discussed, would  
25 be a major improvement to the current condition. I don't

1 see any detrimental impact to removing this use and  
2 replacing it with 30 townhouses.

3 MR. GROSSMAN: Okay.

4 BY MS. BAR:

5 Q And let's next move to access points. And I would  
6 like you to review the two points of access for ingress and  
7 egress to the site, and your review of them as to that they  
8 are safe, adequate, and efficient to serve the site in terms  
9 of the civil engineering aspects.

10 A Okay. The site is currently served by the  
11 extension of Butler Road where my pointer is, which would be  
12 the northeast corner of the property. There is an access  
13 easement from that point to the end of the dedicated portion  
14 of Butler Road which is -- I can show you on one of the  
15 other maps.

16 MR. GROSSMAN: I think we've actually seen it on  
17 one of the earlier ones.

18 THE WITNESS: It's Exhibit 40.

19 MR. GROSSMAN: Right.

20 THE WITNESS: This is the end. Butler Road is  
21 dedicated to this point here which is about 150 feet north  
22 of the property.

23 MR. GROSSMAN: Okay.

24 THE WITNESS: But there is an easement from that  
25 point to serve the property. Additionally, so that access

1 would remain, as we've described. That would be basically  
2 the truck, the commercial vehicle access, because those  
3 vehicles are prohibited from, are currently prohibited from  
4 Little Falls Parkway.

5 MR. GROSSMAN: Right.

6 THE WITNESS: The access point on Little Falls  
7 Parkway is currently shown opposite the northeast corner of  
8 the site in this location we've got on the highlighter.  
9 We've looked at other locations along Little Falls Parkway,  
10 and essentially, the sight distance works in all locations.

11 This is our preferred location, and where we'll be  
12 hopefully moving forward with the plan. Sight distance,  
13 again, is adequate there but we tested the entire run  
14 because we did other studies where we had access at the  
15 southern end and one in the middle. And in our request to  
16 the Parks Department for the easement, we didn't want to pin  
17 down the location to the 10th of a foot, at this point,  
18 because the final design has not yet occurred.

19 MR. GROSSMAN: So the sight distance was okay in  
20 any of those locations?

21 THE WITNESS: Yes. So it's my opinion that access  
22 through these two locations will be safe, adequate, and  
23 efficient.

24 MR. GROSSMAN: What about internal circulation?

25 THE WITNESS: Internal circulation is fairly

1 simple. The residents will come in off of Little Falls  
2 Parkway, turn to the south, through a driveway, and then go  
3 to a T intersection to get to their homes.

4           Wherever you live, you pull in your driveway, you  
5 back out and head back out. The width of the drive, the  
6 private road, is at least 20 feet wide in all locations, so  
7 that it meets fire access standards. Turning radius works.  
8 We've run turning radii for anticipated vehicles.  
9 Everything works in this location.

10           MR. GROSSMAN: And it's safe for pedestrian and  
11 vehicular traffic?

12           THE WITNESS: Yes, I mean, again, we mislabeled  
13 the area as sidewalk. It's really, when you look at here,  
14 you've got nine, 10, 11, 12, 13, 14 driveways crossing the  
15 road. Essentially, it's a continuous driveway apron. There  
16 is some space between the driveways, but it doesn't make  
17 sense to ramp up for those little areas.

18           So we designed this four foot wide strip that  
19 would essentially be a transition from a driveway apron,  
20 from the 20 foot official private road to the private  
21 driveway, so to pick up grade that way.

22           It also, in the area of the T intersection, allows  
23 for the overrun of the fire truck, if it were to have to get  
24 in there and turn around.

25           MR. GROSSMAN: Okay.

1 BY MS. BAR:

2 Q And just briefly, the forest conservation plan, I  
3 know you'll be preparing that for this project. Would you  
4 please review the status of that and what you've, your  
5 discussions with staff and what staff has indicated?

6 A Yes. The property has no forest on it, as we've  
7 described in many different ways today. As such, there is  
8 an afforestation requirement for the site, and we would be  
9 expected to attempt to meet that on site. The tree  
10 coverage that we've shown on site here is approximately that  
11 amount of afforestation are.

12 MR. GROSSMAN: Which is what percent?

13 THE WITNESS: 15 percent.

14 MR. GROSSMAN: Okay.

15 THE WITNESS: So that plan will be submitted in  
16 conjunction with the preliminary plan and site plan, which  
17 we would anticipate to be combined, a combined submittal to  
18 Park and Planning. And it would need to meet their  
19 requirements, and obviously need to be approved in  
20 conjunction with those plans before it could move forward.

21 MS. BAR: That's all I have.

22 MR. GROSSMAN: Mr. Knopf, cross-examination.

23 MR. KNOPF: No questions.

24 MR. GROSSMAN: Nor do I.

25 MS. BAR: All right.

1 MR. GROSSMAN: Thank you, Mr. Irish.

2 THE WITNESS: Thank you.

3 MR. KABATT: I'll save a request, my name is  
4 Mr. Kabatt.

5 MR. GROSSMAN: Why do we always save the traffic  
6 people for last? It seems to be their fate in the world.  
7 They're always the last witness, every time.

8 MS. BAR: I know. In the last --

9 MR. KNOPF: They wait in traffic, they're use to  
10 waiting.

11 MR. GROSSMAN: Yes. I guess that's it.

12 MS. BAR: At our last hearing, Mr. Kabatt has gone  
13 through three days of sitting through everybody else's  
14 testimony, waiting to be called.

15 MR. KABATT: And then I don't think I was.

16 MR. GROSSMAN: I think it's just we want to punish  
17 them of --

18 MS. BAR: And then his wife had a baby.

19 MR. GROSSMAN: Wow. Congratulations.

20 MS. BAR: That's how long he's been waiting.

21 MR. GROSSMAN: He's been sitting there nine  
22 months, waiting to testify.

23 (Discussion off the record.)

24 MS. BAR: All right. My next witness is Chris  
25 Kabatt.

1                   MR. GROSSMAN: All right. Mr. Kabatt. What's  
2 your work location?

3                   MR. KABATT: I am a senior associate with Wells  
4 and Associates, and we're in McLean, Virginia.

5                   MR. GROSSMAN: All right. Would you raise your  
6 right hand, please?

7                   (Witness sworn.)

8                   MR. GROSSMAN: All right. You may proceed. Do  
9 you have his resume?

10                  MS. BAR: I do.

11                  MR. GROSSMAN: We'll make that 58. Thank you.  
12 58 is Christopher Kabatt resume.

13                                 (Exhibit No. 58 was  
14 marked for identification.)

15                  MS. BAR: And again, we can go through  
16 Mr. Kabatt's qualifications, but he has been admitted as an  
17 expert.

18                  MR. GROSSMAN: I don't think he's ever testified  
19 before me, have you?

20                  THE WITNESS: I don't believe so.

21                  MR. GROSSMAN: Let me see what -- so what did you  
22 testify before the hearing examiner on?

23                  THE WITNESS: The most recent case is for Suburban  
24 Hospital and then also for 7001 Arlington Road, the Bethesda  
25 Post Office site.

1 MR. GROSSMAN: Two winning cases.

2 THE WITNESS: That's right.

3 MR. GROSSMAN: In terms of torturing the poor  
4 hearing examiner. I was not the hearing examiner so I can  
5 say that. Okay. Let me say that the Suburban Hospital  
6 hearing lasted 35 days, 35 hearing days.

7 THE WITNESS: I know, I've heard. I've heard the  
8 stories.

9 MR. GROSSMAN: And you were accepted as an expert  
10 and testified in traffic engineering and transportation  
11 planning --

12 MS. BAR: Planning.

13 THE WITNESS: Yes.

14 MR. GROSSMAN: -- in those cases?

15 THE WITNESS: Yes.

16 MR. GROSSMAN: Any questions of this witness?

17 MR. KNOPF: No objections, on questions.

18 MR. GROSSMAN: Based on your past history and your  
19 education background, and your having testified as an expert  
20 in transportation planning and traffic engineering, I accept  
21 you as an expert in such.

22 DIRECT EXAMINATION

23 BY MS. BAR:

24 Q Mr. Kabatt, are you familiar with the local map  
25 amendment application G-907 which is before us today?



1           A       Yes, I am. As described earlier today, EYA  
2   proposes 30 town homes for this site which is an existing  
3   Vetco block plant. Looking at Exhibit 57, the primary  
4   vehicular access for the residents would be from Little  
5   Falls Parkway, and commercial vehicles would have to enter  
6   the community via the secondary driveway on Butler Road,  
7   since trucks are not permitted on Little Falls Parkway.

8           Q       And are you familiar with, and have you visited  
9   the property and the area that surrounds the subject  
10  property?

11          A       Yes, I have. Again, the site is currently served,  
12  the Vetco block plant is currently served by Butler Road,  
13  which is a local street serving the commercial uses that  
14  extend south from River Road.

15                 Little Falls Parkway, on the eastern side of this  
16  site, is a two-lane road between River Road and  
17  Massachusetts Avenue, Massachusetts Avenue with a 35 mile an  
18  hour posted speed limit. Little Falls Parkway does widen at  
19  both River Road and Massachusetts Avenue to provide  
20  auxiliary turn lanes.

21                 MR. GROSSMAN: Excuse me one second.

22                 (Discussion off the record.)

23                 THE WITNESS: However, in the immediate vicinity  
24  of the site, along the site frontage, if you will, Little  
25  Falls Parkway is a two-lane road.

1 BY MS. BAR:

2 Q And could you review the transit service that is  
3 in this area?

4 A Sure. Metro bus does operate a line, the T-2 line  
5 along River Road, and that operates between Rockville Metro  
6 station and the Friendship Heights Metro station. It  
7 operates seven days a week. And it has about 15 to 30  
8 minute headways during peak times.

9 There is also the Ride-On 29 line on River Road  
10 that operates between the Bethesda Metro station, Glen Echo,  
11 and the Friendship Heights Metro station. And that also  
12 operates seven days a week. There are stops for both of  
13 these lines at the Butler Road intersection with River Road  
14 which is less than a quarter of a mile from the townhouses,  
15 proposed townhouses.

16 I would also point out the Capital Crescent Trail.  
17 It provides a route for bicyclists, walkers, roller  
18 bladers, what have you, other non-auto users that they can  
19 get to the Bethesda CBD, and they could also go down to  
20 Georgetown. There's an at grade connection to the trail on  
21 the north side of River Road. As stated earlier, also, EYA  
22 proposes to provide a connection to the trail, and those  
23 details, I guess will be worked out at a later time.

24 Q Now, are you familiar with the County's annual  
25 growth policy and the local area review standards?

1           A     Yes, I am. I have been working in Montgomery  
2 County as a traffic planner for over 14 years, very  
3 experienced with those standards.

4           Q     And did you and your firm do a traffic analysis  
5 and prepare a traffic statement for the application in  
6 accordance with these rules and regulations?

7           A     Yes, we did, because of the size of the proposed  
8 plan, 30 dwelling units, the local area transportation  
9 review guidelines require us to prepare a traffic statement  
10 as opposed to a full blown local area transportation review  
11 traffic study.

12               MS. BAR: And at this point, I would like to  
13 submit into the record the original application for this  
14 property was for 29 units. And Mr. Kabatt's traffic  
15 statement reflected 29 units.

16               It's been updated to reflect 30 units, to be  
17 consistent with the revised application. He will testify as  
18 to the impact of that change, but I would like to submit  
19 this as the next exhibit for the record.

20               MR. GROSSMAN: That will be Exhibit 59.

21                       (Exhibit No. 59 was  
22                       marked for identification.)

23               BY MS. BAR:

24           Q     The traffic statement that was just admitted into  
25 the record, does it address the suitability of the subject

1 property for the proposed use from a traffic standpoint?

2 A Yes, essentially, based on the trip generation and  
3 the size of the project, the proposed use will not have a  
4 significant impact on the surrounding area, and it therefore  
5 suitable for the subject property.

6 Q Can you summarize the report for the hearing  
7 examiner?

8 A Sure. Per the LATR and PAMR guidelines, the 30  
9 residential townhouse units is not of significant size as  
10 the proposed plan will generate fewer than 30 peak hour  
11 trips, 14 trips during the a.m. peak hour and 25 trips  
12 during the p.m. peak hour. The surrounding road network  
13 will adequately accommodate the proposed development.

14 I would also point out that those 25 p.m. peak  
15 hour trips are generated by the townhouses, and they would  
16 displace trips that are already generated by the existing  
17 Vetco site.

18 At the time the application was filed, the PAMR  
19 requirement for the Bethesda-Chevy Chase policy area is 30  
20 percent. Based on the number of new trips generated by the  
21 proposed residential use, seven trips are required to be  
22 mitigated. The applicant proposes to make the appropriate  
23 identified improvements, or make the appropriate payment,  
24 currently valued at \$11,300 per trip, to meet the PAMR  
25 requirement.

1           Q     And using the board, I know other witnesses have  
2     gone into this, but if you can go to the access points, and  
3     just review their operation, and how they function.

4           A     Again, I'm looking at Exhibit 57. Today, the  
5     Vetco plant is accessed by Butler Road. As you come down  
6     from River Road, across that easement, that access, Butler  
7     Road would continue to be used, but by commercial vehicles  
8     only.

9                     That access is planned to be controlled. And we  
10    have the binding element that we would control that access  
11    somehow to limit it to commercial vehicles. I will say we  
12    are in the stages of identifying how we can control that  
13    access point. You can do it through design.

14                    You can see here that the driveway as currently  
15    designed sort of encourages vehicles to turn right as they  
16    are coming from Butler Road, and the curve of the road tries  
17    to make it difficult for someone to turn left to get up the  
18    road to Little Falls Parkway. So there are things with the  
19    design that you can do.

20                    There are also technology that can be used to  
21    encourage, or to discourage other traffic from getting there  
22    and being in control of it. So it can be truly a controlled  
23    access point.

24                    MR. GROSSMAN: How are you going to control the  
25    cut through traffic that was discussed?

1           THE WITNESS: Well, the cut through traffic,  
2 again, through design and signage and technology, I think we  
3 can discourage cut through traffic and any, even the  
4 residents from using that point, and being commercial  
5 traffic only.

6           But in reality, I do not see this route, the  
7 cutting through the townhouse driveway to Butler Road, as  
8 being a huge cut through point for commuters. First, if you  
9 are coming east on River Road towards the city, or towards  
10 Washington, I think you would make a decision earlier in  
11 your trip if there was heavy traffic on River Road as  
12 described earlier.

13           Traffic today turns on streets earlier, Ridgefield  
14 and make their way to Westbard and then down to  
15 Massachusetts. I think that would continue to happen. And  
16 I think the proximity of Butler Road to Little Falls Parkway  
17 doesn't provide that much of a savings to say, if you are  
18 sitting in the queue as far back as was described earlier  
19 that you're going to, you know, Butler Road is going to be  
20 your saving solution.

21           MR. GROSSMAN: I think that's probably true, but  
22 you did indicate in the binding elements that you were going  
23 to discourage cut through traffic. And how exactly would  
24 you do that?

25           THE WITNESS: Well, again, I think that is, that's

1 going to be through the control of that access point of how  
2 it's designed, or if there is some kind of technology used  
3 to limit access via Butler Road.

4 MR. GROSSMAN: You're not going to have a sign on  
5 Butler Road off River saying, no through traffic or no --

6 THE WITNESS: Well, I think that's part of it,  
7 too, is that there will be signage. And that could be part  
8 of the, part of the overall plan to control that use. They  
9 will be private roads. You could even sign it as no outlet,  
10 local traffic only, those sorts of signs.

11 MR. GROSSMAN: Okay.

12 THE WITNESS: So I guess I need to talk about the  
13 Little Falls Parkway --

14 BY MS. BAR:

15 Q Access point, yes.

16 A -- access point.

17 Q I think we got interrupted.

18 A The primary access point for the residents would  
19 be from Little Falls Parkway. And as Mr. Irish testified  
20 earlier, it would meet the appropriate site distance  
21 requirements.

22 MR. GROSSMAN: You'll be able to make a left off  
23 of Little Falls into the development?

24 THE WITNESS: Yes. Little Falls Parkway in this  
25 area is two lanes, one lane in each direction. You would

1 make a left turn from northbound Little Falls Parkway.

2 MR. GROSSMAN: There's no island or anything at  
3 that point?

4 THE WITNESS: Right. There's no --

5 MR. GROSSMAN: Okay.

6 THE WITNESS: It's not median divided, Little  
7 Falls Parkway. I'd just also point out that as noted in  
8 Montgomery County Department of Transportation's referral  
9 letter, they did indicate that the site access and the  
10 details for the site access would be determined through the  
11 subdivision process.

12 BY MS. BAR:

13 Q And they didn't have any objection to the zoning,  
14 from that standpoint?

15 A Right, they did not object to the rezoning.

16 Q So, in your professional opinion, will the  
17 vehicular access be safe, adequate, and efficient?

18 A Yes, as stated previously, the development will  
19 not have a measurable traffic impact on the surrounding road  
20 network. Appropriate sight distance is available at the  
21 driveway on Little Falls Parkway, and the secondary access  
22 on Butler Road, which would serve only a nominal number of  
23 vehicles per day, the commercial vehicles. And it is also  
24 currently used by the Vetco plant, is also safe, adequate,  
25 and efficient.



1           Q     So it is your opinion that the project will be  
2 adequately served by public roads?

3           A     Yes. And it will, just to reiterate, that we  
4 still would have to go, we still would have to go through  
5 the subdivision review and meet the appropriate tests at  
6 that time.

7           MS. BAR: That's it.

8           MR. GROSSMAN: Questions.

9           MR. KNOPF: Yes, unfortunately.

10                               CROSS-EXAMINATION

11           BY MR. KNOPF:

12          Q     Could you turn to Exhibit 41L. Maybe we can all  
13 look at that.

14          MR. GROSSMAN: 41L.

15          BY MR. KNOPF:

16          Q     That's just a little -- do you have it?

17          A     I see it here, yes.

18          Q     Yes. Okay. I'm waiting for the hearing examiner  
19 to get it.

20          MR. GROSSMAN: I got it.

21          BY MR. KNOPF:

22          Q     I think I had reviewed this, not knowing what I  
23 now know. Under the binding elements or the way this  
24 circulation system works, pedestrians and bicyclists, as  
25 well as cars, can come from Little Falls Parkway through the

1 bridge and into the project, is that correct?

2 A Yes.

3 Q Well, those that might be going to the, either to  
4 the townhouses or to the Crescent Trail, they have to walk  
5 past, so to speak, the connection with Butler, where Butler  
6 connects to his, is that correct?

7 A Correct.

8 Q Well, I don't see, and there is no sidewalks.  
9 People are just going to be walking down the middle of the  
10 street? Because I understand the sidewalks, there's no  
11 sidewalks, even though previously I thought there were  
12 sidewalks. I understood what was labeled sidewalks.

13 A Does it show up clearly that there is -- I'm  
14 stepping up to look at the exhibit --

15 Q Whatever exhibit will help you.

16 A -- but this is the yellow path, as shown on  
17 Exhibit 57, from Little Falls. It's a sidewalk that crosses  
18 the bridge.

19 Q And then what happens?

20 A And then as you cross, you would cross the Butler  
21 Road access point, and there is no indication on this plan  
22 as a crosswalk or anything, but -- and then as you get to  
23 the other side, there is that four foot type path that  
24 Mr. Irish referred to.

25 Q There will be a path there.

1           A     Yes.

2           Q     Because that --

3                   MS. BAR:   Yes.

4                   BY MR. KNOPF:

5           Q     -- I'm getting excited, because that same four  
6     foot was shown elsewhere, and we were told, no, that's not  
7     going to be sidewalk.  So I just wanted to know, where is it  
8     sidewalk and where isn't it?

9                   MR. IRISH:  Could I clarify that?

10                  MR. GROSSMAN:  Sure.  Come on forward, Mr. Irish.

11                  MR. IRISH:  Chuck Irish, again, for the record.  
12     There will be a continuous path from Little Falls Parkway to  
13     the Capital Crescent Trail --

14                  MR. KNOPF:  Okay.

15                  MR. IRISH:  -- going generally in this location.

16                  MR. GROSSMAN:  In this location being the northern  
17     end?

18                  MR. IRISH:  It basically cross the northern end of  
19     the site until it reaches the trail property, and then goes  
20     southerly for a little bit until it connects up with the  
21     trail.

22                         In this location along the trail property behind  
23     lots 18 and 21, that's generally where a pathway exists  
24     today.  This detailed location will be worked out in the  
25     field with staff in the site plan process.

1           MR. GROSSMAN: The landing that they were talking  
2 about, is that what you are saying?

3           MR. IRISH: Exactly. But to answer the question,  
4 there will be a -- I believe it's a five-foot wide planting  
5 requirement from the Little Falls Parkway all the way to the  
6 trail.

7           MR. GROSSMAN: I think that the reason, what  
8 raised the question was, of course, if you look at the  
9 schematic development plan, it says, labels that area  
10 colored the same way as a four-foot sidewalk. But  
11 apparently at that point, if I understand correctly,  
12 Mr. Irish, at that point that actually will be a sidewalk,  
13 in effect. There will be a connection and it will continue.

14          MR. IRISH: That's correct.

15          MR. GROSSMAN: But it won't be a sidewalk when it  
16 gets in front of the individual townhouses.

17          MR. IRISH: That's correct.

18          MR. GROSSMAN: Okay.

19          MR. KNOPF: Thank you. That's what I wanted to  
20 clarify.

21          MR. GROSSMAN: Okay. Good question.

22          BY MR. KNOPF:

23          Q     Now then, you had mentioned you might turn, when  
24 cars coming from Butler towards the direction -- excuse me,  
25 trucks coming to sort of force them to make a right, rather

1    than a left to go over to Little Falls, how could that be  
2    done and still allow the townhouse people to get out over  
3    Little Falls, by making a left? I mean, if the road turns  
4    to the right, then everybody is forced up to Butler.

5           A     I was just, I was just noting on the plan, again,  
6    looking at Exhibit 57, looking out, the driveway from Butler  
7    sort of angles, and curves towards the western portion of  
8    the site. You can see there is the curve in the driveway.  
9    And that is done to sort of direct certain -- that the  
10   vehicles be directed towards entering towards the community  
11   as opposed to turning left out to Little Falls.

12          Q     Right, but then somebody coming from the  
13   townhouses wanting to go out on Little Falls --

14          A     Yes.

15          Q     -- that goes by that turn? I just --

16          A     Well, it's still, you have your full width --

17               MR. GROSSMAN: You can see it on the schematic  
18   development plan.

19               BY MR. KNOPF:

20          Q     Well, I just can't see it on this little one.

21          A     -- your 20-foot width.

22               MR. GROSSMAN: You can see it. They can come out  
23   here onto Little Falls Parkway.

24               THE WITNESS: I think that street is --

25               BY MR. KNOPF:

1           Q     I'm sorry, I'm just looking -- well, I am  
2 concerned, and I wish you would elaborate. I don't want to  
3 extend this too much, but the agreement in the binding  
4 elements, number eight says that there are supposed to be  
5 traffic control mechanisms restricting traffic, not to  
6 deter, but to prevent cut through traffic.

7                     And I'm sort of asking, is there something, in  
8 fact, that can exist that will cut through. I haven't heard  
9 you mention anything except you are going to look at it.  
10 And I understand that's the commitment. Are you confident  
11 that, in fact, something can be constructed there that will  
12 greatly deter so that it effectively prevent traffic from  
13 going in?

14                    And I'm not only talking about from Butler down to  
15 Little Falls, but from Little Falls, traffic backed up  
16 waiting to get onto River Road and making a left, could it  
17 not easily cut through, if they see this nice opening and  
18 then go over to Butler and cut up to Butler and avoid the  
19 light? So it's a two-way process that we need to deter  
20 traffic.

21           A     Well, again, through, we have not gone through the  
22 complete design and picked the design mechanism where  
23 technology, that type of mechanism that will be used to  
24 control the Butler Road access, and be just commercial  
25 vehicles only, that will be worked out at the later time,

1 preliminary plan, and will be reviewed by agencies. I can  
2 only commit right now at this point that we, they do have  
3 the binding element that they would have to control that  
4 access at some, in some way.

5 I can purport that there is mechanisms out there  
6 to control that access, one, by some kind of design that  
7 really makes it difficult for a vehicle to turn, to make  
8 that turn from Little Falls Parkway onto the driveway and  
9 then right onto Butler Road. And then coming the other  
10 direction that would make it difficult for that vehicle to  
11 turn left. That would be some kind of physical design.

12 And then again, we think there are some  
13 technologies out there, call boxes, cameras and sensors with  
14 gates that can be used to control that access.

15 MR. GROSSMAN: Something short of when they  
16 stopped Sonny Corlioni.

17 BY MR. KNOPF:

18 Q Well, just let me ask, it seems, I don't want to  
19 belabor this, but just one last point, because I don't think  
20 you guys are thinking as strongly about this. You have a  
21 lot of other things to think about, than what the community  
22 is thinking about. But wouldn't it be the easiest to put up  
23 a gate, a bar on the Little Falls Parkway entrance, and the  
24 residents have cards to go in and out, or something like  
25 that?

1           That's a private road under the easement  
2   agreement. The agreement with the Park and Planning says  
3   it's to be owned by the townhouse development, to the  
4   general public excepts for bikes and pedestrians. But we're  
5   not worried about that.

6           MR. GROSSMAN: Well, we don't really want to get  
7   into that. It's part of the -- I think that's more detail  
8   than we want to get into at rezoning.

9           MR. KNOPF: They're thinking about that, so we  
10   have something effective. This was important. I'll let  
11   that go. Thanks very much.

12          MR. GROSSMAN: Any redirect?

13          MS. BAR: No.

14          MR. GROSSMAN: Thank you. Thank you, Mr. Kabatt.  
15   Enjoy your new child.

16          (Discussion off the record.)

17          MR. GROSSMAN: All right. So I take it we have  
18   now exhausted the witness list?

19          MS. BAR: I think we have exhausted the witness  
20   list.

21          MR. KNOPF: And the hearing examiner.

22          MR. GROSSMAN: And the hearing examiner, yes. All  
23   right. I presume that -- are there anymore exhibits to  
24   introduce?

25          MS. BAR: No, just the things we need to submit to



1    you, and I don't know if we want to go through them.  I  
2    think I have them all.

3               MR. GROSSMAN:  Let's deal with these exhibits  
4    first.  So I presume you want admitted into evidence  
5    exhibits 1 through 59 and their subparts.  Is that correct?

6               MS. BAR:  Right.  Yes.

7               MR. GROSSMAN:  Any objection?

8               MR. KNOPF:  I have an important -- number 37 --

9               MR. GROSSMAN:  Number 37.

10              MR. KNOPF:  -- a corrective letter to be  
11    corrected, part A.

12              MR. GROSSMAN:  Part A.  A corrective letter from  
13    Norman Knopf.

14              MR. KNOPF:  Not quite spelled correctly.

15              MR. GROSSMAN:  Oh, I see, they spelled your name  
16    incorrectly.  All right.  Well, other than minor spelling  
17    errors, Exhibits 1 -- she has trouble with that for some  
18    reason -- Exhibits 1 through 59 and their subparts are  
19    admitted.

20                               (Exhibit No. 1-59 was  
21                               admitted into evidence.)

22              MR. GROSSMAN:  All right.  Now, in terms of what  
23    you need to submit --

24              MS. BAR:  Yes.  I think I have it all.  I don't  
25    want to keep everybody here to go through that.  And between

1 us, hopefully we have enough notes. And I can, I assume I  
2 could confirm that in an email with you, and send it to  
3 Mr. Knopf and we could all be in agreement.

4 MR. GROSSMAN: Yes, but you need to, you also have  
5 to send it to Mr. Humphrey and Mr. Dyer.

6 MS. BAR: Dyer. Yes.

7 MR. GROSSMAN: Okay. And let's talk about when do  
8 you want to file whatever you are going to file? How much  
9 time do you need?

10 MS. BAR: I'm relying on other people also, so do  
11 we think by two weeks? One week? But that's by this Friday  
12 or by next Monday?

13 MR. LANDFAIR: Next Monday.

14 MS. BAR: You can get everything in.

15 MR. GROSSMAN: I'll make a note here somewhere.  
16 So by next Monday which would be August 1. Right? This is  
17 8/1/11, applicants revised submissions. And you're also  
18 going to submit it to technical staff, as well as to us.  
19 And also the electronic copies of all of those things. And  
20 don't forget the electronic copy of the Powerpoint  
21 presentation as well.

22 And then we should give people 10 days to respond.  
23 And that means the record would close then on August 11th.  
24 So August 11 is the date the record closes on anybody who  
25 has anything else they want to say regarding the

1 submissions. All right. Does that sound reasonable? I'm  
2 going to be out of town, by the way, beginning on August 12,  
3 for a week. So don't expect me to respond if you email me  
4 then. Does that sound reasonable to everybody?

5 MR. KNOPF: That's fine. No, I hope not to be  
6 around on the 10th, either.

7 MR. GROSSMAN: Okay. Is there anything else that  
8 we need to cover?

9 MS. BAR: I was briefly going to do some closing  
10 arguments.

11 MR. GROSSMAN: I think that's fair. Go ahead.

12 MS. BAR: Very brief, because of the hour. You've  
13 heard testimony from three and a half experts. I'll give  
14 him a little extra credit, that the proposal meets all of  
15 the necessary elements of the ordinance to approve the  
16 rezoning from I-1 to RT-15.

17 I won't elaborate, but it's our contention that it  
18 meets all three prongs of the purpose clause, including,  
19 although it's not the precise sector plan recommendation of  
20 RT-10, the sector plan certainly indicates a preference that  
21 townhouse zoning is appropriate on this location.

22 It goes through numerous reasons why this would be  
23 a great improvement from the existing use. But in addition,  
24 the I-1 is almost a holding zone, as it were, and a better  
25 recommendation, certainly, than the I-2, but should access

1 be approved, then townhouses would be appropriate.

2 We have complied with that requirement. And we  
3 believe that although not a specific RT-15 recommendation,  
4 that it is a general enough townhouse designation that it  
5 meets that requirement.

6 And we also submit that the more specific  
7 recommendations of the sector plan with respect to this site  
8 and its redevelopment override the general ones for keeping  
9 some industrial uses in that area.

10 We do not agree with Mr. Humphrey's position on  
11 that. And I was frankly kind of surprised to hear it, but  
12 you always learn something new doing this work. And given  
13 his usual slavish attempts to make all of us as applicants  
14 comply with all of the requirements of the sector plan.

15 MR. GROSSMAN: Master plans.

16 MS. BAR: We think, I submit that we have showed  
17 that it's appropriate density for the site given its  
18 location, and that it is a transition between higher and  
19 lower density uses as well as compatible, and in the public  
20 interest because of the provision of the MPDU's, all the  
21 environmental issues, cleaning up a brown field site, the  
22 trail connections, and all of the other beneficial aspects  
23 that it will provide to the community.

24 And given, and that brings me to the community,  
25 which is with the one caveat or the issue with the parking

1 is, as you have heard today, largely supportive. I think  
2 they, you heard the testimony from the Coalition of the  
3 Capital Crescent Trail and the Little Falls Watershed  
4 Alliance in terms of the that the improvements of this use  
5 versus the current use would provide. And they are  
6 supportive of it.

7 I know that there are issues, the main issue of  
8 the case, of course, was the issue on parking. And I do  
9 want to clarify something that I may have misstated. I  
10 think I indicated that there would be 65 spaces. I wanted  
11 to make clear that that is inclusive of the eight visitor  
12 parking spaces; that the revised schematic development plan  
13 that we will provide will go from 63, providing 63 to 65,  
14 which as we have testified is already more than the  
15 statutory requirement of 60 spaces.

16 But as was testified to by Mr. Youngtentob, in  
17 fact there will be upwards of 50 additional spaces that can  
18 be provided on the site. We strongly believe that this is  
19 an issue that should be fully needed out at site plan.

20 We expect to be working with Mr. Knopf and the  
21 community from now until the submission of that plan, that  
22 they will be involved in the site plan and the preliminary  
23 plan process. And we think there are too many elements of  
24 this project that are, have not been completely decided,  
25 that will be at site plan, that impact that ultimate number

1 to ask us to bind it any further than we have at this  
2 juncture.

3 And with that, I think we have covered everything,  
4 and we hope that you recommend approval.

5 MR. GROSSMAN: All right. Mr. Knopf, do you wish  
6 to say something?

7 MR. KNOPF: I just want to ask a quick -- do I  
8 understand that you are then willing to put as a binding  
9 element the 65?

10 MS. BAR: It will be 65 including --

11 MR. KNOPF: Because that's not in the binding  
12 elements now.

13 MR. GROSSMAN: Right.

14 MS. BAR: We will provide it.

15 MR. GROSSMAN: She indicated earlier that they  
16 were willing to change that binding element to guarantee the  
17 eight spaces, and the two additional spaces that  
18 Mr. Youngentob found.

19 MR. KNOPF: I'm just -- if I get a 30 second  
20 closing, I would just state --

21 MR. GROSSMAN: 27 seconds for you.

22 MR. KNOPF: That's fine. I just want to point out  
23 that under section 59-C-1.721, there are supposed to be, the  
24 purpose clause is to provide such development amenities  
25 normally associated with less than 10 zoning categories, and

1 to prevent detrimental effects to the use and development of  
2 adjacent properties. And we're just saying, the parking  
3 shortage here we think conflicts with those two purposes.

4 MR. GROSSMAN: So you recommend against approval?

5 MR. KNOPF: We recommend that the applicant come  
6 up with some binding element that provides at least a better  
7 base for parking, and then we can revisit it more, possibly,  
8 at the Planning Board.

9 MR. GROSSMAN: And if they don't?

10 MR. KNOPF: If they don't, I have to, I believe  
11 accordingly, the community has to take another vote. We did  
12 not vote on this other issue.

13 MR. GROSSMAN: Well, you'll have a little bit of  
14 time to submit something in answer to that. And you have to  
15 decide whether or not those extra, the guarantee, at this  
16 juncture, of the extra parking is sufficiently important to  
17 your client to recommend against moving from an I-1 zone to  
18 an RT-15 zone.

19 MR. KNOPF: Well, we prefer to place the burden on  
20 the hearing examiner as to whether you can find there is  
21 compatibility with this.

22 MR. GROSSMAN: Oh, I'm going to make a  
23 recommendation.

24 MR. KNOPF: Right.

25 MR. GROSSMAN: One way or the other, that's my

1 job. I always end up with a recommendation.

2 MR. KNOPF: I understand. We're just really  
3 flagging the issue that your recommendation has to meet this  
4 criteria.

5 MS. BAR: And one more clarification so we can  
6 beat this to death.

7 MR. YOUNGENTOB: Yes, we just want to clarify for  
8 the record which regard to this. This is Mr. Youngentob.  
9 For the parking calculation, the binding element should  
10 still read as a calculation of two per market rate, and the  
11 eight visitor spaces. The one for the MPDU's three units  
12 will have -- I'm sorry, two units will have two spaces,  
13 three will have one, and then eight visitor.

14 And the only reason why I want to clarify that is  
15 if, by chance, at the hearing, the preliminary plan hearing,  
16 we're reduced by a market rate unit, or we're reduced by an  
17 MPDU, that the parking may not be 65, but will be reduced by  
18 that.

19 MR. KNOPF: That's fine.

20 MR. YOUNGENTOB: So we're committing to the --

21 MS. BAR: That's how we'll --

22 MR. KNOPF: But I thought this just, I thought  
23 three units had two parking, or four units of the MDPU had  
24 two parking?

25 MR. YOUNGENTOB: I think only two an be counted as



1     official spaces.

2                 MR. KNOPF:  Oh I see.  Okay.

3                 MR. YOUNGENTOB:  Actually four of the MPDU's will  
4     have two --

5                 MR. KNOPF:  Two.  I stand correct.

6                 MR. YOUNGENTOB:  -- but only two can be counted.  
7     So I just wanted to clarify it.  So not to be --

8                 MR. KNOPF:  And that hinges on the head of a pin.  
9     Okay.  Thank you.

10                MR. GROSSMAN:  So, have we come to a conclusion?

11                MS. BAR:  Yes.

12                MR. KNOPF:  I think we have.

13                MR. YOUNGENTOB:  I think we have.

14                MR. GROSSMAN:  Thank you.

15                MS. BAR:  Thank you.

16                MR. KNOPF:  Thank you.

17                (Whereupon, at 6:04 p.m., the hearing was  
18     concluded.)

19

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21

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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that  
the attached pages represent an accurate transcript of the  
electronic sound recording of the proceedings before the  
Office of Zoning and Administrative Hearings for Montgomery  
County in the matter of:

Petition of EYA Development, LLC

Local Map Amendment No. G-907

By:

A handwritten signature in black ink, appearing to read "Teresa S. Hinds". The signature is fluid and cursive, with the first name "Teresa" and last name "Hinds" clearly distinguishable.

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Teresa S. Hinds, Transcriber